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Comment: Draft Water Quality Control Policy For Developing California's Clean Water Act
Section 303 (d) List

General

There has been significant sincere effort put forward by staff in developing this policy. It is important to acknowledge certain areas of disagreement so that we can review, clarify, and enhance these efforts and move forward with effective and workable policy.

This policy sets standards and control for the listing process for impaired waters. It is important for the management of these vast and immensely important resources that waters that do not meet water quality standards are listed, promptly, so that the planing process for protecting and restoring these resources may commence, and the heath, safety, and welfare of the citizens of California are protected.

To conserve limited resources, it is also important not to improperly list waterbodies that are not impaired. However, it must be pointed out that inaccurate and wrongful listings have been a very minor problem compared with the tasking of managing the list of truly impaired waterbodies.

The following is a discussion and recommendations , for your review, of related issue to this policy:

Consistency

The Board and the regulated community have clamored for "consistency". It can be argued that a consistent process should be sought for many reasons - including but not limited to: economic efficiency, reliance, error limitation, reasonable confidence levels. All of these goals are reasonable. However, these goals will all go down the drain if the policy fails to address the overriding goal of protecting and rehabilitating the state's water resources. Policy must take into account vast differences in waterbodies, pollutants, biologic function, chemical interactions, drainage area, geology, and long term effects on these resources. Creating a consistent process

(policy) with all of these variables is difficult, at best. The goal of consistency should not limit effectiveness of process to accommodate appropriate listing of impaired waters.

Use of Binomial Method

Use of binomial statistical inference does not work well with small data sets. Small sample sizes will show no reliable effect - or - small data sets can not reliably show presence or absence.

Use of binomial model is not tempered - spatial and/or temporal distribution problems may not fit with or work well with the model. If a pollutant has a seasonal variation, use of binomial model can not account for this - monitoring may miss a pollutant if done in the wrong time or season. Pollutant spatial concentrations can not, or are not likely to be taken into account - or missed entirely.

The binomial system can rule out weight of evidence and/or professional judgment. An example of this is in the case of biologic function impaired by pollutant or pollutants: how do you measure biologic function parameters to fit needs of binomial model - when biologic condition parameters are measured ocularly with use of visual criteria? Not all listing criteria can be monitored by devices or in the lab, thus reliance on the weight of evidence and professional judgment is necessary. How much sampling can we afford if the method of gathering evidence is to hang out in the river and count fish, frogs, macroinvertebrates, measure hole depths, etc.. The role of funding for monitoring plays into this problem. We do not have robust monitoring programs. There are instances where specific kinds of sampling are very expensive. Where are we to get money needed for level of evidence required for listing by use of the binomial model, where the monitoring needed is very expensive and hard to come by?

The above being said, use of binomial methods as a double check, and not as the only pass or fail criteria, can have an acceptable place in listing policy. The role of professional judgment, weight of evidence, multiple lines of evidence, should be acknowledged and encouraged as acceptable policy for developing criteria, thresholds, and making determinations of exceedance.

6.2.3. Evaluation Guideline Selection Process

If numeric guidelines are to be used for evaluation and representation of attainment standards, it is difficult to contemplate how these numeric standards may apply to biologic function - or loss thereof. Assessment without substantial numeric basis may be necessary.

Flexibility must be demonstrated by this policy to accommodate biologic impairment. Again, the role of professional judgment, weight of evidence, multiple lines of evidence, should be acknowledged and encouraged as acceptable policy for developing criteria, thresholds, and making determinations of exceedance. Language should be altered in this section to reflect this need and be integrated with section 3.1.9 - for consistency.

3.1.11 Alternative Data Evaluation

Language supporting the role of Regional Board staff's professional input needs expansion in this section.

The role of professional judgment , weight of evidence, multiple lines of evidence, should be acknowledged, by language added to this section - and encouraged as acceptable policy for developing criteria , thresholds, and making determinations of exceedence.

2.1 Water Quality Limited Segments Category

This section calls for listing if the water quality standard is not attained, and the standards of nonattainment is due to a pollutant or pollutants.

Yes - the water body must be listed. A TMDL may or may not be the appropriate solution. Should TMDL be automatic?

Again, this goes back to the role of professional judgment , weight of evidence, multiple lines of evidence. Consideration of the above should be acknowledged by language added to this section.

3.1.6 Water and Sediment Toxicity

The language indicates that the pollutant must be identified - before listing? or before TMDL? The language in this section could be clarified. If impairment is demonstrated listing must occur - even if pollutant can not be identified. Should a TMDL wait for identification of pollutant? Probably. But, not always. Promulgation of a TMDL may be the course needed for pollutant identification.

Once more we may have to rely on professional judgment, multiple evidence lines, and weight of evidence.

One General Conclusion

In much of the above comments the recurring theme is that the policy does not sufficiently rely on, or could rely more on, the assessment and data capabilities of Regional Board staff. Regional Board staff, and the whole process, will work best at attaining water quality standards if given appropriate flexibility to apply their professional capabilities. It is appropriate to require all staff to document and justify use of any line of reasoning and methodology - supported by the best science available. Policy should not inhibit needed flexibility to get the job done correctly. Regional Board, and State Board staff have no reason to list waterbodies that should not be listed. There is also no reason that staff should not do a competent job in providing necessary (and defensible) documentation of the decision making process. This is where the policy can be most successful - in providing format for documentation and justification of a listing.

Other Considerations

Sediment Listing/TMDLS on North Coast Rivers

During the public hearing on these matters (in Sacramento) it was stated by timber and agricultural proponents, in regards to these sediment listings and TMDLS:

- * They do not like the sediment science (thresholds) used
- * Implied that the process was not public
- * Would like review of historical listings
- * It is not the listing that is the problem, it is the Implementation - it diminishes land values
- * Over fishing kills the fish and loss of habitat is not responsible for fishery loss and (at the same time) there are plenty of fish in our rivers

My comment on these items:

* Of course they do not like the science. This is because they do not like what comes with having these rivers listed. It costs money to do things correctly and fix problems. The science that was used was more than sufficient - with use of multiple lines of evidence (with biologic and function impairment scientific references) and best professional judgment. There was not a lot of evidence on sediment monitoring in all the files of the listed rivers. But, the multiple lines of evidence and scientific discussion supported the listings. Now, almost 10 years later and with more sediment monitoring and assessment, the monitoring data and science metadata is huge. In fact, if one were to review recent THPs (Coast Cascade Region/North Coast Rivers) in any sediment listed watershed, the evidence can be in almost any THP (provided by the RPF, and multiple agency reporting) that the watercourses and major drainages are suffering from ongoing impacts (sediment accumulation, loss of habitat, pool filling) from historic and near-recent timber harvest operations.

* There was a public hearing process. The timber landowners were just not paying attention and want a second chance. A second chance is available which at the TMDL development level, Implementation Plan development level, and/or new (credible) evidence can be added to the file.

* Re-reviewing all these listings would result in the same outcome - listing. Going through this process would be a huge waste of resources and set the schedule for implementation (you are not going to implement if you need to re-review) back another 2 or 3 years - which is precisely what they would like to see.

* I do not believe land values are diminished by implementation planning by any measurable amount. Garcia land values seem stable - as evidenced by recent land sale prices.

* Fish populations do go in cycles and there has been over fishing. There has been a slight resurgence in the numbers of coho salmon returning to some rivers. The overall trends are still down (to a large extent) from historic levels. There has also been a precipitous decline in spawning and rearing habitat values. This has been substantiated by supported scientific review and

CDFG surveys, etc.. Large numbers of baby (2 year old or less) salmonids found in a stream do not indicate increases in populations. Survival of adult spawners returning to the rivers is indicative of population trends.

* Implementation Planning (Basin Plan Amendment) was argued to the SWRCB to be part of the long term solution and basis of support of the NCRWQCB Conditional Waiver of Waste Discharge (Policy) for logging operations. Implementation Planning has fallen way behind schedule. It would be nice to see progress here. If the Conditional Waiver Policy is to have merit and be supported by Implementation Action Plans, progress must be demonstrated by approval of TMDL related Implementation Plans.

Alternatives Must be Considered

In the event that CEQA review is mandated for this project (I am not arguing the CEQA compliance issue), discussion of alternatives (with analysis) may bring some insight to what may or may not help the process work more efficiently - from both the environmental objective point of view and organizational policy.

Mandated under CEQA, if potential impacts can be identified, is the necessity to analyze and discuss potential project alternatives. This discussion must include the reasoning related to selection of project choices and mitigations and the relationship of this reasoning in choosing the environmentally superior alternative.

Much can be learned by considering and discussion alternative options.

State Anti-degradation Policy - Listing Policy must be consistent with state anti-degradation policy and Cal Water Code.

"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."

Sincerely,



For Coast Action Group

Cc: US EPA
NCRWQCB