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February 9, 2004

Mr. Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Wilson:

**WATER QUALITY CONTROL POLICY FOR
DEVELOPING CALIFORNIA'S CLEAN WATER ACT
SECTION 303(d) LIST AND DRAFT FUNCTIONAL
EQUIVALENT DOCUMENT**

The County of Los Angeles Department of Public Works appreciates the opportunity to comment on the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List and Draft Functional Equivalent Document. Enclosed are Public Works' final comments addressing the document.

If you have any questions, please contact Mr. Fereidoun Jahani at (626) 458-4392, Monday through Thursday, 7:30 a.m. to 6 p.m.

Very truly yours,

JAMES A. NOYES
Director of Public Works

FOR ROD H. KUBOMOTO
Assistant Deputy Director
Watershed Management Division

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**COMMENTS ON THE WATER QUALITY CONTROL POLICY FOR DEVELOPING
CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST AND DRAFT
FUNCTIONAL EQUIVALENT DOCUMENT**

The County of Los Angeles Department of Public Works embraces the concept of a uniform policy for developing California's Clean Water Act Section 303(d) list, and fully supports the inclusion of requirements regarding quality and quantity assessments. However, we do have a number of concerns regarding the draft policy as addressed below.

Public Works believes it is necessary to re-evaluate water quality standards and beneficial uses within the Regional Basin Plans prior to the listing of additional waters or initiation of Total Maximum Daily Load (TMDL) development for waters already on the 303(d) list. We recommend the inclusion of such re-evaluations within this listing policy as discussed in the July 2003, draft in order to allow for the most beneficial allocation of resources by avoiding development of TMDLs for waters which may be listed inappropriately.

It has come to the attention of Public Works that annual Municipal Separate Storm Sewer System (MS4) monitoring report data may not be utilized for the purpose of 303(d) listings. If this is the case, Public Works requests that such data is included as a source of information. Also, annual reports such as these are a form of additional data and, as such, 303(d) listed waters should be re-evaluated based on annual report submittals.

Public Works is in favor of the inclusion of a "planning list" on which waters with some indication of an impairment could be placed as discussed in the July 2003, draft of this policy. Waters would remain on this list until further data is obtained that either supports or refutes the waters' inclusion on the 303(d) list. For example, Section 3.1.6 states that a water may be placed on the 303(d) list for toxicity alone prior to identifying the pollutants. Placement on a "planning list" would allow further monitoring of waters where causes of the impairment have not yet been determined, adequate data is not yet available, or water quality standards may be inappropriate. The inclusion of a planning list would also allow for the most beneficial allocation of resources by focusing the 303(d) list on those waters with adequate data to support a listing.

Public Works requests the inclusion of a re-evaluation of each impaired water body on the 2002 303(d) list as was originally proposed in the July 2003, draft policy. Many of the listings on the 1998 and 2002 303(d) list may be inappropriate due to limited data, evidence that natural sources may be responsible for the impairment, and inappropriate water quality standards. Public Works believes it is necessary to ensure that these listings are consistent with the current listing policy.

Section 2 of the draft policy discusses categories in which waters may be placed on the 303(d) list. The water quality limited segments and TMDLs completed categories both appear to address waters for which TMDLs have been completed and implementation plans have been adopted, but water quality standards have not yet been attained. Please clarify the intended difference between these categories.

Sections within the Water Quality Limited Segments Factors state that "for sample populations less than 10, when 3 or more samples exceed the evaluation guideline, the segment shall be listed". This statement allows for the inclusion of waters with only 3 samples on the 303(d) list, which is inconsistent with Table 3.1. Please address this inconsistency. Also, Public Works believes that the use of a sample population of 20 may be more appropriate to place a water on the 303(d) list.

Section 3.1.2 suggests that if a water experiences low dissolved oxygen concentrations in the morning and sufficient concentrations in the afternoon it should be assumed that nutrients are the cause of the impairment. Public Works believes that while dissolved oxygen data may be enough to place a water body on the "planning list" or may be used as secondary data to support a 303(d) listing, it is inadequate as a sole indication of a nutrient impairment. The inclusion of a water on the 303(d) list for a nutrients impairment must include nutrient data. Public Works requests that Section 3.1.2 be revised to reflect this.

Public Works has concerns regarding Section 3.1.10 of the proposed listing policy. The Trends in Water Quality section allows the use of short term data which may be affected by hydrologic conditions, such as drought as opposed to actual degradation of the water quality. Data from the most recent five to seven years may be more appropriate to avoid the impacts of such hydrologic conditions. This section does not include assistance in determining baseline conditions or declining water quality. While Public Works is supportive of antidegradation policies, water bodies that do not show impairment of water quality standards should not be addressed within the 303(d) list. Antidegradation findings may however be sufficient cause to place a water body on the "planning list" imposing further monitoring.

Section 3.1.11- Alternate Data Evaluation section appears to allow the listing of a water using data that would otherwise be considered inappropriate. Public Works believes that the inclusion of this section within the listing policy will allow the addition of waters on the 303(d) list which are not justifiably impaired and respectfully requests its elimination.

The draft policy states that a site specific exceedance frequency may be used for bacteria in areas where recreational uses apply. However, this document suggests that those objectives are based on water quality standard exceedance in a "relatively unimpacted" watershed. Public Works believes it is necessary to clarify the term "relatively unimpacted" for the purpose of this document.

Within this document the use of laboratory test data is suggested as a basis for adverse biological response objectives. Public Works suggests the use of peer-reviewed studies to determine a statewide standard for such objectives within this document.

In Section 5, the last bullet discussing availability of funding and information to address the water quality problem should be split as these are unrelated issues.

Section 6.1 states that "Data and information older than ten years may be used if the original listing was based on that data" when evaluating existing listings. This is inconsistent with Section 6.2.5.2 which states that "only the most recent ten-year period of data and information shall be used for listing and delisting waters." Water quality may change significantly within a water body over a ten year period due to efforts to comply with increasingly stringent water quality standards. Therefore, the inclusion of historic exceedance data will make it very difficult to de-list any waters in which the quality has improved. Public Works believes that data from the most recent five to seven years may be more appropriate. Public Works requests that when known changes have taken place in a water body (such as implementation of management practices) only recent data be considered during re-evaluation. Also, when requesting the re-evaluation of a water body, the interested party usually provides supporting data. However, this should not be a requirement.

According to Section 6.2.5.6 of the draft policy data may be "pooled" with that of an adjoining segment of a water body for listing purposes provided that there is at least one measurement above the applicable water quality objective in each segment. Public Works believes that the use of one measurement above the applicable standard to list a water segment is unacceptable and inconsistent with Section 3 of this policy as discussed above. Also, while data from an adjoining segment may be used as a secondary source of data, it is not appropriate to use as the sole listing source.

Within the draft policy, the only discussion of natural sources is in section 6.2.5.7 which states that segments in which water quality is impaired due to natural sources should not be placed on the 303(d) list. However, there is no discussion within this document of the use of a natural source exclusion to de-list a water. Public Works asserts that if all anthropogenic sources have been controlled and a water body still exceeds water quality standards in areas with natural sources of impairment, the water should be de-listed on the basis of a natural sources exclusion. Please include additional language to reflect this de-listing option.

Throughout this document the reader is referred to Section 6. It may be useful to reorganize the structure of the document to include the Policy Implementation section prior to such references.