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

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

Dear Mr. Wilson:

The Calleguas Municipal Water District ("District") appreciates the opportunity to comment on this important policy. As background, the District is a participating member in the Calleguas Creek Watershed Management Program, which is currently developing TMDLs for the watershed in accordance with detailed work plans developed in coordination with the Los Angeles Regional Water Quality Control Board ("Regional Board") and approved by EPA Region 9. Local stakeholders participating in the watershed program have committed significant funds for that purpose (currently estimated to cost between \$3.5 and \$5.5 million). Moreover, stakeholders have committed to complete all TMDLs by the very tight deadlines specified in the EPA Consent Decree. Pursuant to the Consent Decree, TMDLs for historic pesticides, PCBs, and toxicity must be approved by EPA by March of 2006 and those for metals must be approved by March of 2007. Due to lengthy public review and approval processes, watershed stakeholders must submit proposed TMDLs for these sets of pollutants by December of 2004 and December of 2005 respectively. It is with these responsibilities in mind that the District submits the following comments on the draft listing policy.

PRIMARY CONCERN - DELISTING CLARIFICATION NEEDED

The policy provisions regarding listing reevaluation and delisting need to be clarified. As now drafted, the provisions are ambiguous and subject to varying interpretations. The following modifications are proposed for purposes of clarifying the provisions:

Section 4, California Delisting Factors, the first sentence of the second paragraph should be modified as follows:

All listings of water segments shall be reevaluated removed from the section 303(d) list if the listing was based on faulty data.

Section 6.1, Evaluating Existing Listings, should be modified as follows:

Water segments and pollutants on the section 303(d) list shall be reevaluated if the listing was based on faulty data or if new data and information become available indicates that the waters would not meet listing requirements based on the California Listing Factors. The steps to complete a reevaluation are:

An interested party may request an existing listing be reassessed under the provisions of the Policy. In requesting the reevaluation, the interested party must describe the reason(s) the listing is inappropriate, state the reason the Policy would lead to a different outcome and provide the data and information necessary to enable the RWQCB and SWRCB to conduct the review.

The steps to complete a reevaluation based on a faulty listing are:

- A. Document the basis for the original listing.
- B. Provide information documenting that the listing was based on faulty data or information, including, but not limited to, typographical errors, improper quality assurance/quality control procedures, limitations related to the analytical methods that would lead to improper conclusions regarding the water quality status of the segment, or deviation from listing policies in effect at the time of the listing.

The steps to complete a reevaluation based on new data and information are:

- A. All readily available data and information shall be used to assess a water segment. Data and information older than ten years may be used if the original listing was based on that data.

- B. In performing the reassessment the RWQCBs shall use the California Listing Factors (i.e., waters shall be assessed as if they had never been listed before) to assess each water segment-pollutant combination. If the original listing was established using the provisions of this Policy, the California Delisting Factors shall be used.

~~An interested party may request an existing listing be reassessed under the provisions of the Policy. In requesting the reevaluation, the interested party must describe the reason(s) the listing is inappropriate, state the reason the Policy would lead to a different outcome and provide the data and information necessary to enable the RWQCB and SWRCB to conduct the review.~~

The most recently completed section 303(d) list shall form the basis for any subsequent lists.

The suggested modification to Section 4, California Delisting Factors, is necessary to clarify that the RWQCB should not only reevaluate but delist water segments that were listed based on faulty data or information.

The suggested modification to Section 6.1 is necessary to clarify that waters may be delisted either because the original listing was based on faulty data or because new data and information indicates the waters do not meet current listing requirements.

It is important to Calleguas Creek stakeholders that requirements for delisting are both clear and reasonable. That is because several of the listings within the watershed appear to be based on faulty data or otherwise unsupported by new data and information. In the absence of a clear policy in those cases, delisting may not be possible and Calleguas Creek stakeholders may be required to expend significant local funds on the development of TMDLs for waters that are not impaired.

OTHER SIGNIFICANT ISSUES

The Policy should not provide for listing of water segments based on trends. It is an extremely difficult task to identify trends, primarily because of the many factors, including climatological factors, that may cause water quality levels to cycle up and down over long periods of time. A statistical analysis of considerable data over a long period of time would be necessary to establish true trends. Three years of data is insufficient for that purpose. Furthermore, it is unclear why the State Board is proposing to use trends as a basis for listing. There is no requirement in federal or state law to list waters based on trends. There are already many more listings than the State will be able to address with available resources in the foreseeable future. Finally, trends can be addressed by far more efficient and less costly processes than the TMDL process.

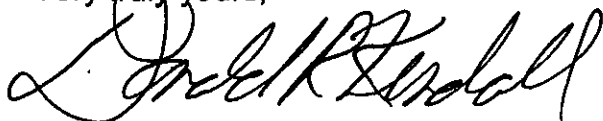
The Enforceable Programs section of the Policy (Section 3.3) should be moved and instead addressed solely in the Implementing Policy. All three draft TMDL-related documents currently out for review address enforceable programs. Although all three are generally consistent, each is slightly different. We support the Enforceable Programs approach presented in these documents, but believe it is best to address this important issue in a single document to avoid confusion and differing interpretations. We further believe that the Implementing Policy is the most appropriate document for that purpose.

The Policy should be reviewed for consistency with other related draft documents.

The Policy should be compared to the Draft Process Guidance and the Draft Implementing Policy and any inconsistencies identified should be resolved. In some cases, the Policy is inconsistent with one or more of the other documents. For example, in Section 6.2.5.7, the Policy states that water segments impaired due to natural sources shall not be placed on the 303(d) list. However, in Section I.B, the Draft Implementing Policy states that when water segments are impaired due to natural conditions, revision of the standards may be the most appropriate action, implying that the water segment should be listed, but later removed upon modification of the standards. Inconsistencies between the documents will likely lead to inconsistencies between Regional Boards in how they interpret and apply the policies.

Thank you for the opportunity to comment on these documents. Please contact me at (805) 579-7113, if you have any questions.

Very truly yours,



Donald Kendall,
General Manager

cc: Water Quality/Water Resources Subcommittee Members
Steering Committee Members
Calleguas Board of Directors