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February 18, 2004.

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

Subject: CCEEB's Comments on Draft TMDL Guidance and Implementation Policy

Dear Mr. Wilson:

On behalf of the California Council for Environmental and Economic Balance, (CCEEB), I appreciate the opportunity to provide comments on the SWRCB's draft 303(d) List Policy.

As you are aware, impaired water quality issues, particularly the 303(d) listing and delisting requirements as well as TMDL development and implementation issues are very important to CCEEB. In that regard, CCEEB strongly commends the SWRCB for taking the initiative to develop a 303(d) Listing Policy so that Regional Board determinations and inclusion of water bodies on the 303(d) List are done through consistent implementation of standardized criteria, guidance and processes.

CCEEB has reviewed the draft 303(d) Functional Equivalent Document (FED), and have the following comments:

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v. Edmund G. 'Pat' Brown
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1. Issues with use of Precautionary Principle:

CCEEB recognizes that the SWRCB must often regulate based on scientific information that does not include the total and complete information to make a 100% definitive decision. We believe our above suggestions will allow the state and regional boards to make the appropriate listing decisions. However, we note that at the workshops, some commentators raised the issue of the need to implement "precaution" into listing decisions. CCEEB is concerned that when the term "precaution" is used, they are advocating the "Precautionary Principle" as defined by the Wingspread definition: *"When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically (...)"*. CCEEB views the precautionary principle as an extreme form of precaution. For example, one of CCEEB's concerns is that application of the "precautionary principle" does not include either evidentiary standards or procedural criteria for what constitutes a "threat of harm." What quantity and quality of evidence or information is required to "raise a threat of harm" is uncertain. This uncertainty can lead to regulation based on mere allegations of harm – which is not a sound basis for regulation. CCEEB believes that California's environmental programs are based on a "precautionary approach" that addresses risks to the environment by setting standards and regulatory mandates by using conservative assumptions and safety factors, but also based on the use of good science. CCEEB believes and supports efforts to enhance precaution, but "precaution" should not mean zero risk and it should not be a mandate to act without credible threat of harm. We believe that our above suggestions will allow the SWRCB to use good science in listing decisions and to appropriately list impaired waters.

2. Structure of the Section 303(d) List:

CCEEB disagrees with the SWRCB's recommendation of Alternative 5, which is to focus the structure of the Section 303(d) list to only one list – the 303(d) list. This action will automatically define as impaired, those water bodies where, 1) impairments are undetermined (the toxicity is unknown), 2) water bodies for which insufficient data exists to support the determination of an impairment, and 3) water bodies for which the water quality standards are not appropriate. Based on the structure of the 2002 list, this action alone, will result in an estimated 300+ additional water bodies to be placed on the 303(d) list, this is on top of the estimated 200 that were added to the 303(d) list in 2002.

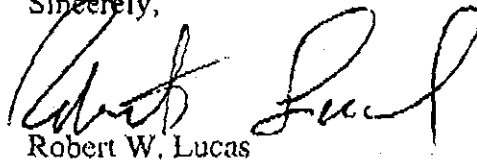
CCEEB urges the SWRCB reconsider its recommendation and instead consider Alternative 2. CCEEB believes it is more appropriate for the SWRCB to categorize those water bodies, which lack sufficient monitoring data, and/or documentation (as described above) and should instead be placed on a "Watch or Planning List". This approach is not only consistent with the current California 2002 303(d) List structure, but is also consistent with the recommendations by the National Academy of Sciences (NAS, 2001).

3. Weight of Evidence for Listing and Delisting:

CCEEB strongly supports the SWRCB's recommendation of Alternative 1. The inclusion of a Weight of Evidence approach for listing and delisting is critical to ensuring there is consistency among local Regional Boards when determining whether water bodies are impaired or not. As noted during the public workshops, there was extensive discussion regarding the issue of Weight of Evidence procedures as well as other criteria and guidance on ensuring data quality and validity. CCEEB believes it is critically important that such data quality and weight of evidence requirements be incorporated in the Policy to ensure that California's limited resources are focused on water bodies truly impaired and should be addressed immediately. It would also ensure that for water bodies for which there exists lack of credible data or uncertainty, limited resources are not spent unnecessarily.

Thank you for your consideration of our comments. CCEEB looks forward to continue working with you and your staff on this important Policy. If you have any questions, please contact me at 916-444-7337.

Sincerely,



Robert W. Lucas