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3/20/07 BdMtg Item 7
 Listing Policy
 Deadline: 3/8/07 12 noon

March 8, 2007

Ms. Song Her, Clerk to the Board
 Executive Office
 State Water Resources Control Board
 1001 I Street, 24th Floor
 Sacramento, CA 95814
 By email: commentletters@waterboards.ca.gov



RE: SWRCB Meeting Session Item 7 – Workshop to Review Implementation of the Water Quality Control Policy for Developing California's CWA Section 303(d) List

Dear Ms. Her, Chair Doduc, and Board Members:

The California Department of Transportation (Department) appreciates the opportunity to comment on the implementation of the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (Listing Policy). We strongly support the policy and its goals of bringing consistency to the listing process and having a verifiable technical basis. We also have suggestions for possible amendments. The Department is investing hundreds of millions of public funds in storm water treatment, and we are concerned that this investment may be at risk, depending on the time scheduling approach used in the policy.

The Policy was very helpful during preparation of the 2006 list and should additionally help the Regional Boards to create a uniform basis for the 2008 listing effort. The listing and delisting process is a considerable regulatory undertaking, and the policy has provided a firm basis for an effort that otherwise would be almost unmanageable.

As the Board decides what further action to take with respect to the Policy, we have the following suggestions. Several of these were also included in our letter of January 24, 2005 concerning the proposed *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options*.

1. **A watershed approach for TMDL scheduling** – TMDL scheduling is addressed in Section 5. The Policy identifies a set of non-inclusive criteria for scheduling TMDLs including, water body significance, degree of impairment, potential threat to human health and the environment, and other

factors. We suggest that implementation of a watershed approach should be added as a primary goal of the scheduling.

A watershed approach for TMDL scheduling would ensure all impairments are addressed concurrently in the TMDL planning effort for a specific waterway so the resultant structural controls are compatible. The intent is to avoid the piecemeal issuance of allocations resulting in controls being built that potentially cannot be integrated with controls needed for subsequent TMDLs.

The 303(d) listings and resultant TMDLs for the Los Angeles River present a good example of possible problems from the piecemeal issuance of TMDLs for single waterway. As you know, the Los Angeles River Trash TMDL has a numeric goal of zero trash, and the implementation plan requires a 10 percent reduction in trash loading per year over a 10-year period. The Department developed its own treatment units—named gross solids removal devices (GSRD)—and it is currently installing these devices to comply with the TMDL. GSRDs are the only devices that provide assured control in the right-of-way environment.

We are currently making these expenditures now to meet the TMDL schedule. However, the Los Angeles River is also listed for metals, coliform and other constituents, depending on the reach. We are concerned that a portion of our ongoing investment in trash controls may be lost if a different approach becomes necessary to address the whole range of pollutants requiring TMDLs. Some controls, such as those for coliform, may require a consolidated approach. Small-scale disinfection of storm water runoff has not been demonstrated, and the most probable effective control may be consolidation of flow and large-volume treatment. If flows are consolidated for treatment elsewhere, the earlier end-of-pipe controls may not be needed and may have to be abandoned, and the public funds used to construct and implement them will be wasted.

This issue exists elsewhere in the state where waterways have multiple listings with significantly different TMDL completion dates. We propose that the Board amend the Listing Policy so that all pollutants causing impairments can be addressed at the same time. To make this approach work, it may be necessary to focus SWAMP monitoring on high priority waterways to ensure that the list of pollutants causing impairments is comprehensive.

- 2. Identifying pollution prevention targets for action by the Board** – Some ubiquitous pollutants causing impairment result from automobile wear and tear. Specifically lead, copper, and zinc from automotive sources are suspected major sources for many of the listings for these metals. The Board itself could take statewide action to prevent these pollution sources by issuing regulations or supporting legislative action.

A similar approach was used in the nine Bay area counties to ban copper-based root killers, which were contributing to high copper concentrations in treated wastewater from sewage treatment plants. In 1994, San Francisco Regional Board staff developed and co-sponsored a bill that was taken to the California State Assembly. The legislative effort resulted in a commitment by the California Department of Pesticide Regulation to develop regulations and, in December 1995, the DPR adopted emergency regulations prohibiting the sale and use of copper-based root control products in the nine counties.

We suggest that the Listing Policy include provisions to initiate Board action to investigate the potential for statewide source control for pollutants frequently identified for causing impairments.

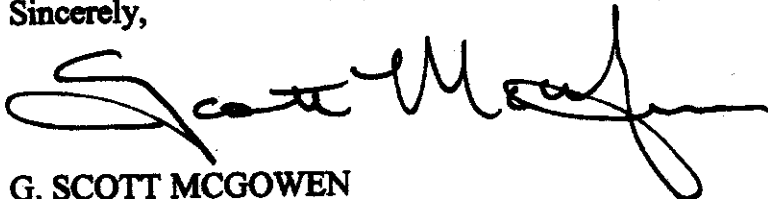
- 3. Overall feasibility and funding priorities** – The current difficulties in funding TMDL implementation suggest that full implementation of all planned TMDLs may not be feasible. In particular, public agencies may not have the necessary funds. We suggest, therefore, that the Board consider, as part of the Listing Policy, an approach for prioritizing TMDL implementation. This process would identify the highest priority watersheds and focus TMDL implementation efforts on these areas first, so available funds would be directed where they are needed most. The CWA Section 208 planning process may be an appropriate mechanism for this area wide planning and prioritization effort. On a statewide basis, TMDLs could be incorporated into the Continuing Planning Process (CPP) that may provide an opportunity for a statewide assessment of feasibility together with enhanced public participation in setting statewide goals.

The alternative is that available public funds will be spent on the earliest TMDLs and may not be available for subsequent TMDLs that may address higher priority problems. While, the 303(d) list does include a prioritization scheme (high, medium, low), it is not based on the financial feasibility of public agencies being able to fund all probable TMDLs. We realize that, in many cases, TMDL preparation is driven by consent decrees. However, the preparation of implementation plans for the TMDLs is a state requirement. It may be possible to incorporate the prioritization effort as part of a watershed plan to address listed impairments. In our letter of January 24, 2005, we suggested a possible approach prioritizing TMDLs to address.

- 4. Assessing Natural Sources of Pollutants** - The Department supports the alternative approach 2 presented in the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (12/2003) for Issue 7I: Assessing Natural Sources of Pollutants, "Do not place water bodies exceeding water quality standards due to natural sources on the section 303(d) list". This would require water bodies not to be listed on the 303(d) list if they do not meet water quality standards due to natural source pollutant loads. In addition, previously listed waters that do not meet the standards, as a result of natural source loads, would be removed from the 303(d) list. This approach will prevent the allocation of resources to water bodies that would not benefit from the TMDL process and allow the Department to focus on water bodies where this process would have the greatest impact.

Again, thank you for this opportunity to submit our comments. If you have any questions, please contact Keith Jones at (916) 653-4947.

Sincerely,



G. SCOTT MCGOWEN
Chief Environmental Engineer

c: Craig Wilson, SWRCB, CJWilson@waterboards.ca.gov