



O'Laughlin & Paris LLP

Public Comment
Listing Policy Amendment
Deadline: 12/22/14 by 12:00 noon

Attorneys at Law

December 22, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Proposed Changes to State Water Resources Control Board's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List

Dear Ms. Townsend,

The San Joaquin Tributaries Authority (SJTA) is concerned with the proposed changes to the State Water Resources Control Board's (State Water Board) Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Proposed Policy). Two proposed revisions are of particular concern to the SJTA.

The Proposed Policy eliminates the requirement that the State Water Board hold a public workshop before adopting the section 303(d) list. Instead, the Proposed Policy would provide only the opportunity for limited public comment. Unlike a workshop, limited public comment does not provide sufficient opportunity for stakeholders to interact in a two-way communication with the decision makers and other stakeholders. Listing impaired waterbodies on the 303(d) list involves the consideration of complicated issues that have significant regulatory implications for the stakeholders on newly listed waters. These issues are very likely to be insufficiently addressed within the proposed one-sided opportunity for comment. This is no small thing; the complexities of aquatic ecosystems require more data and information – not less. The appropriate method is an open and robust public process through a Board workshop. The proposed change to reduce public engagement is troubling; the SJTA requests the State Water Board not approve this constraint and not adopt the Proposed Policy with regard to altering the level of meaningful public input.

The Proposed Policy delegates the authority to approve the 303(d) list to the Executive Director. This delegation is outside the authority of the State Water Board. Resolution No. 2012-0061 governs the delegation of authority to the Executive Director; it does not explicitly authorize the Executive Director to adopt the 303(d) list. Further, the proposed delegation is not consistent with the spirit of Resolution No. 2012-0061, which primarily authorizes the delegation of ministerial action. Nothing in Resolution No. 2012-0061 authorizes the Executive Director to make policy considerations in place of the Board itself. The delegation of authority to adopt the 303(d) list is an action that goes

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significantly beyond ministerial action and should remain the responsibility of the State Water Board.

In addition, the delegation to the Executive Director further compromises public notice, input, and stakeholder involvement. The existing policy requires the State Water Board approve the 303(d) list after a public workshop. Thus, after the public workshop and comment period, the public would be aware of the State Water Board's action through a notice that the proposed adoption was on the State Water Board calendar and an additional opportunity to address the State Water Board in person when the State Water Board takes the adoption up for a vote. By delegating the authority to the Executive Director, the public will no longer be made aware of the impending adoption with a calendar notice, nor will the public have the additional opportunity to comment on the proposed adoption through appearance and testimony at a State Water Board meeting. Instead, after the initial notice and comment period, the Executive Director may consider and adopt the 303(d) list without any further opportunity for public input. Not only does this insulate the Board from a performing responsibility that is rightly its duty, but it further distances the Board from the stakeholder community and the exchange of information and ideas that occurs during testimony before the Board in an open and transparent public setting.

The SJTA recommends the State Water Board reconsider the Proposed Policy and the significant changes that limit public input on the adoption of the 303(d) list. As noted above, the State Water Board's adoption of the 303(d) list is not an insignificant action. For stakeholders that operate water facilities on listed waters, the listing is a significant action with great regulatory impact. Before adopting the list, the State Water Board should promote a robust and public process and the Board itself must remain the decision-making entity.

Very truly yours,
O'LAUGHLIN & PARIS



VALERIE C. KINCAID

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