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February 12, 2004

Arthur G. Baggett, Jr., Chair  
Members of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

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

Dear Mr. Baggett:

The Partnership for Sound Science in Environmental Policy (PSSEP) appreciates the opportunity to comment on the *December 2003, Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (Draft Listing Policy) and *Draft Functional Equivalent Document* (FED). PSSEP is an association of San Francisco area and statewide public and private entities – businesses, municipal wastewater treatment agencies, trade agencies and community organizations. PSSEP was founded on the overriding principle that federal, state and local environmental policy decisions should be predicated on sound, objective science.

PSSEP believes that the 303(d) list developed by the final listing policy should only contain water segments with real water quality problems. It is imperative that the limited resources of the State, local governments and private companies not be diverted from those waters where TMDLs really are needed. Rather than maintaining an approach where virtually “anything and everything” is placed on the TMDL list, regardless of the technical or objective merits for doing so, it is vital that the State Board establish a credible “triage” approach that achieves the most benefit for the resources dedicated.

PSSEP agrees with the FED that listing decisions should be based on the “null hypothesis” that assumes water quality standards are met. PSSEP supports the data quality assurance and quantity requirements contained in the Draft Listing Policy and sound statistical approaches including requiring confidence levels to determine impairment. PSSEP believes these approaches are appropriate to confidently identifying real water quality problem areas that are worthy of TMDLs.

- Bay Area Clean Water Agencies
- Bay Planning Coalition
- California Alliance for Jobs
- California Association of Sanitation Agencies
- California Council for Environmental & Economic Balance
- California Manufacturers & Technology Association
- Chemical Industry Council
- Contra Costa Council
- Oakland Metropolitan Chamber of Commerce
- Pacific Merchant Shipping Association
- San Leandro Chamber of Commerce
- Tri-TAC  
Sponsored by:  
League of California Cities  
California Association of Sanitation Agencies  
California Water Environment Association
- Western States Petroleum Association
- Craig S.J. Johns  
Executive Director

Arthur G. Baggett, Jr.  
Members of the State Board  
February 12, 2004  
Page 2

PSSEP's major concerns with the Draft Listing Policy include absence of a planning or watch list and the limited conditions in which the existing 303(d) list can be reassessed. Our concerns are explained in more detail below.

*The Policy Needs to Include a "Monitoring" or "Planning" List.* The July 1, 2003 Draft Water Quality Control Policy for Guidance on Assessing California's Surface Waters (July 2003 Draft) recommended multiple categories or lists to describe water body conditions. One list recommended was the Planning List. This list was to be used for water segments with limited and/or insufficient data to determine if water quality standards were attained or where lines of evidence contradicted one another. Water segments on the planning list had a high priority for monitoring. The Draft Listing Policy has removed the planning list and does not contain provisions for such water bodies. PSSEP believes that this list should be reinstated.

The FED states on page 36, "water bodies placed on the preliminary [watch or planning] list would be the focus of additional monitoring and assessment of new data and information. This additional assessment would lead to a better understanding of the impacts to beneficial uses and water quality standards exceedances. If, as a result of the more complete assessment, there is sufficient evidence to indicate that water quality standards are indeed exceeded, the water segment on the preliminary list would be moved to the section 303(d) list." The concept of a planning or preliminary list has also been recommended by the National Academy of Sciences in its July 2001 report to Congress: *Assessing the TMDL Approach to Water Quality Management*.

PSSEP endorses a watch or planning list because it focuses the appropriate response to such waterbodies – making it a priority to obtain the necessary data to make a scientifically sound impairment assessment – rather than scheduling and developing a TMDL for a segment without a reasonable certainty of impairment or having no listing for a segment which requires additional attention. A watch or planning list provides all stakeholders the assurance that attention will be focused on waters suspected to be impaired without imposing the consequences of developing a TMDL on stakeholders and the State and Regional Boards. PSSEP is concerned that without a watch or planning list, Regional and State Boards will be pressured to place water segments on the 303(d) list absence of a sound scientific basis using the more subjective listing criteria currently contained in the Draft Listing Policy.

*Placement on the Section 303(d) List Should Occur ONLY if a specific pollutant is identified that causes impairment.* PSSEP believes it is appropriate to place water segments with impairments due to toxicity, adverse biological response or degradation of biological populations, or where the pollutant has not yet been identified, on a planning list. In these cases, additional data is necessary to identify the stressor pollutant. It is more likely than not that the necessary data to identify a pollutant will be collected in a timelier manner if it is given

Arthur G. Baggett, Jr.  
Members of the State Board  
February 12, 2004  
Page 3

the priority of the planning list, rather than up to five years or more before data is collected and a TMDL can be developed if it is placed on the 303(d) list. As the Draft Listing Policy and FED recognize, the pollutant must be identified before a successful TMDL can be developed.

*PSSEP advocates the review of existing standards prior to listing a water body on the 303(d) list.* As stated in the FED at page 31: "The major disadvantage to this approach [not including a standards review prior to a listing or delisting decision] is that existing standards may not represent actual water body conditions and the problem identified during the listing process may no longer represent a real water quality problem." Although the Draft Listing Policy does not call for a standards review, PSSEP believes listing a water body on a planning list when the standards need to be reviewed is more appropriate and a better use of resources than listing it on the 303(d) list and doing a standards review as part of the TMDL process. Because of EPA's settlement agreement, many inappropriate standards are being used as the basis of TMDL allocations, or a parallel process to revise inappropriate standards is taking place. This is an ineffective use of resources and does not focus our limited resources on real water quality problems. By allowing water bodies where standards are being reviewed for appropriateness to be listed on a planning list, the appropriate resources can be allocated to collect the data and information to determine the appropriate criteria protective of beneficial uses.

*"Trends in Water Quality" alone do not justify placement on the Section 303(d) List.* PSSEP believes that "trends in water quality" are not sufficient to place a segment on the Section 303(d) List where standards are currently being achieved. Such a scenario "may" warrant placing the segment in question on the planning or monitoring list. By including such a segment on a planning list, limited resources can be used to solve real water quality problems and attention can still be focused on the segment by requiring continuing monitoring and periodic reassessments without requiring a TMDL to be developed prematurely.

*The Policy must include an appropriate mechanism for interested parties to seek more efficient review of historical Section 303(d) listings.* The Draft Listing Policy limits the reevaluation of water segments only when *new* data or information is available. Although PSSEP advocates review of the entire existing 303(d) list under the final adopted listing policy, PSSEP recognizes the resources that would be required to do such a review. PSSEP recommends that the State Board revise the language in Section 6.1 to allow review of any water segment listed on the 2002 Section 303(d) list for conformance with the adopted listing policy when an interested party requests the review and states why under the adopted policy, the listing decision would change.

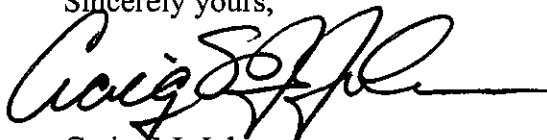
Arthur G. Baggett, Jr.  
Members of the State Board  
February 12, 2004  
Page 4

Limiting the review to those situations only when new data or information is available will lead to huge resource allocations to develop TMDLs where a TMDL may not be justified. For example, the State Board's document, *A Process for Addressing Impaired Waters in California* (December 2003), estimates the staff time to develop a bacteria TMDL to be a *minimum* of 684+ hours, not including time for the regulatory process and approval tasks. PSSEP does not think it is good use of public and private resources to require and develop TMDLs for water segments whose listings cannot withstand the scientifically based criteria contained in the Draft Listing Policy. This current limitation for review burdens both State and Regional Board staff as well as stakeholders by forcing development of a TMDL without *new* data when existing data may lead to a different listing decision.

The Draft Listing Policy continues the practice of using the existing 303(d) list as a basis for each successive list. Many of these listing have never been reevaluated under any guidelines because the lack of new data or information (FED at p. 189). However, as testified to at the January 28, 2004 Workshop, many of the listings decisions for the current 303(d) list were made with limited data, have little to no justification, and would not meet the criteria such as statistical exceedance frequency requirements, data quantity or quality requirements, *etc.* set forth in the Draft Listing Policy. Requiring *new* information or data for these cases adds an onerous requirement to the reevaluation process for existing listings.

Allowing review of existing segments without requiring the data or information to be *new* would address some concerns stated in the FED. First, it would not require staff to review the entire existing 303(d) list at this time, but would focus efforts on those segments where a interested party requests the review and states how under the adopted policy the listing decision would change. Second, it would allow reevaluation of existing listings that do not warrant the development of costly and time consuming TMDLs on segments that do not meet the listing criteria. This would save both staff time and money to focus on segments where a TMDL is really warranted. And third, it would not require to an interested party to obtain *new* data or information when the existing information does not warrant a listing decision. Segments needing additional data could be placed on a planning list.

Sincerely yours,



Craig S.J. Johns  
Executive Director