Tri-TAC
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League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

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Via Electronic and U.S. Mail

Craig J. Wilson, Chief
Water Quality Assessment Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Subject: **Comments on *Draft Staff Report on Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments***

Dear Mr. Wilson:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide comments on the proposed revisions to the Clean Water Act section 303(d) list of water quality limited segments. CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California. Many of CASA and Tri-TAC's individual members have submitted comments that address specific listings within their watersheds, and we request that you give careful consideration to the issues raised in their testimony and letters.

CASA and Tri-TAC were actively engaged in the development of the Water Quality Control Policy for Development of California's Section 303(d) List (the "Listing Policy".) At the outset, we want to express our appreciation for the improvements in the process used in developing the 2006 303(d) list. As a result of application of the Listing Policy, the proposed listings are more consistent, understandable and transparent. Compared to past listing cycles, the proposed listings are generally better documented and more scientifically valid. As you know, CASA and Tri-TAC still have significant

concerns about some aspects of the Listing Policy; however, the use of an adopted policy has added a measure of predictability and consistency to listing decisions that vastly improves the process from our perspective. We are concerned that some stakeholders may seek to have the State Water Resources Control Board (State Water Board) depart from the policy on an ad hoc basis to alter the proposed list; the Water Board is, of course, bound to follow its own policy in this area.

Notwithstanding our overall support for the process, CASA and Tri-TAC have identified some areas where we believe the State Water Board has not properly exercised the discretion that exists under the Listing Policy, and where revisions to the list are needed.

Use of Total Metals Data

In most cases, it appears that the State Water Board used dissolved metals data to evaluate trace metals concentrations against the California Toxics Rule (CTR) dissolved metals criteria. This practice is appropriate, because the CTR criteria are expressed as dissolved. Although it is incorrect to create a new listing by comparing total metals analysis with dissolved metals criteria, total metals analysis can be helpful in determining if a delisting should occur. This is true since the dissolved portion of a total metals analysis is *always* less than or equal to the total metals concentration. Therefore, if the total metals analysis results in a concentration lower than the dissolved metals criteria, the sample should be used in the analysis for delisting. For example, if the dissolved criteria is 100 ug/L and there are 30 samples that all indicate a total metals concentration of 80 mg/L or less, it must be concluded that the dissolved criteria is being met.

Calculation of CTR Metals Criteria

The fact sheets do not provide consistent information regarding hardness data used to calculate hardness-dependent metals criteria. The fact sheets should be revised to clearly indicate the hardness values used to calculate the water quality criteria. In some instances, there is no information that indicates whether actual hardness data or default hardness values were used to calculate the applicable criteria. In others, the fact sheets state that an assumed hardness value of 100 mg/L was used to calculate the criteria. We note that the 100 mg/l hardness value was included in the CTR "for illustrative purposes only," so it is not a "default" value. Actual hardness values are important because, as noted in the CTR, "[f]reshwater aquatic life criteria for certain metals are expressed as a function of hardness because hardness and/or water quality characteristics that are usually correlated with hardness can reduce or increase the toxicities of some metals. Hardness is used as a surrogate for a number of water quality characteristics which affect the toxicity of metals in a variety of ways." (65 Fed. Reg. 31692.) In addition, only water quality data with paired hardness values should be used. In the absence of information

that supports the selected hardness value, the data should not be considered to be of sufficient quality to make water quality attainment determinations.

Use of All Readily Available Data and Information

Section 6.1 of the listing policy states that, "All readily available data and information shall be evaluated." It does not appear that all readily available data and information have been evaluated as a part of this listing. As one example, it is evident from the fact sheet that the data analyzed as a part of the Los Angeles River Metals TMDL was not considered in the analysis. Although the TMDL includes the analysis of 96 samples from the Burbank Western Channel (extending through December 2003), the fact sheet lists only six sample events. Of the 96 samples for the Burbank Western Channel included in the TMDL analysis, only one of these 96 samples exceeded the water quality objectives from the California Toxics Rule. As another example, the State Water Board is proposing to list Coyote Creek (in Region 4) as impaired due to cyanide. The State Water Board cites as the basis for listing the fact that 4 out of 9 samples exceed the applicable CTR criteria. All of these data were collected by the Los Angeles County Department of Public Works at one station in the water body. If additional receiving water data collected at 3 additional receiving water stations by the Sanitation Districts of Los Angeles County are considered in the analysis, then just 5 out of a total 87 samples exceed the cyanide California Toxics Rule (CTR) chronic criteria of 5.2 ug/L, which does not meet the minimum criteria for listing in Table 3.1.[1] In both of these examples, not only does the inclusion of these data in the dataset considered provide better temporal and spatial representation, but, importantly, it also changes the listing decision. It is important -- and moreover, required -- that the State Water Board consider all readily available data and information in preparation of the list.

Water Quality Limited Segments Being Addressed Through Other Programs

As we did during the development of the Listing Policy, CASA and Tri-TAC support separately tracking water body segments which are being addressed via other regulatory programs. This allows the State Water Board, Regional Boards and stakeholders to direct limited resources to the development of those TMDLs that are needed to attain water quality standards. An example of listings that should be placed in this category of the 303(d) list are water bodies listed for diazinon. The United States Environmental Protection Agency (U.S. EPA) has mandated a phase out of all non-agricultural uses of diazinon, requiring retail sales of diazinon for indoor and outdoor uses to cease as of December 2002 and December 2004, respectively. U.S. EPA's action should eliminate all urban usage of diazinon, once existing stocks of this pesticide have been used up. The U.S. EPA's phase out of urban uses of diazinon is a good example of

[1] Data supporting the examples cited herein are being submitted to the State Water Board under separate cover by individual commenters.

an existing regulatory program that can be reasonably expected to result in attainment of the diazinon evaluation guideline within a reasonable, specified time frame. Therefore, it is most appropriate to address this pollutant with the Water Quality Limited Segments Being Addressed category, where water quality impairments for diazinon in urban area water bodies have been documented and otherwise meet the criteria for listing under the Listing Policy, but for which a TMDL is not necessary.

Incorrect Application of Beneficial Uses

Several proposed listings for the Los Angeles region appear to result from incorrect application of the potential municipal drinking water beneficial use designation to several waterbodies. (For example, the beneficial use of MU (or MUN) does not apply to the Los Angeles River or Burbank Western Channel.) These proposed listings are based on the application of water quality objectives that are associated with the "potential" MUN beneficial use category, yet this use does not apply to these waterbodies. Those potential municipal drinking water supply use designations with an asterisk (*) designation in the Basin Plan in the Los Angeles Region have been found to be "conditional" use designations of no legal effect. The State Water Board should remove from the proposed list those water bodies that are listed due to an "impairment" of a nonexistent use.

Notwithstanding the concerns noted above, CASA and Tri-TAC believe that, as a result of the application of the Listing Policy and the efforts of State Water Board staff to carefully review and analyze proposed listings and de-listings, the proposed revisions to the Section 303(d) List generally represent an improvement over previous listings.

Sincerely,

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CASA

Charles V. Weir
Chair
Tri-TAC