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March 15, 2011

Mr. Chris Beegan
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: COMMENTS ON THE PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA, PART 1, SEDIMENT QUALITY OBJECTIVES

Dear Mr. Beegan:

Tri-TAC appreciates the opportunity to comment on the proposed amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries of California, Part 1, Sediment Quality Objectives (Part 1 SQOs). The proposed amendments will establish new narrative objectives for resident finfish and wildlife as well as non-substantive and other minor changes to the existing Plan.

Tri-TAC's primary comment concerns changes related to Sediment Quality Objectives that are not being considered by the SWRCB at this time. Specifically, Tri-TAC is concerned that the SWRCB's 303(d) listing policy is not being amended to clarify and stipulate the proper use of SQOs in the 303(d) listing process.

The importance of amending the 303(d) listing policy was noted by the State Board in the Resolution that adopted the Part 1 SQOs (Resolution 2008-0070) which states:

"The State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development. The State Water Board recognizes the need to ensure that the listing policy and this plan are consistent. The State Water Board will, therefore, consider amending the 303(d) listing policy in the future to ensure consistency with this plan."

Resolution 2008-0070 also directed State Board staff to initiate appropriate proceedings to amend the State Listing Policy by February 2009. The amendments to the Listing Policy are therefore two years past due.

There are inconsistencies between the State Listing Policy and the existing sediment quality objectives in Part 1 as well as the proposed amendments to Part 1. Such inconsistencies include, but are not limited to, Sections 3.6, 3.8, 3.9, 6.1.3, 6.1.5.8 of the Listing Policy. These inconsistencies create confusion in the regulatory framework, particularly in 303(d) listing and delisting decisions and the

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development and establishment of TMDLs. As these inconsistencies continue in the regulatory framework, it will become increasingly more difficult for regulators and the regulated community to identify the State's intent on defining what constitutes the protection of beneficial uses. There are numerous TMDLs currently being reevaluated and developed that address sediment quality issues. Therefore, time is of the essence for the State Board to consider the necessary amendments to the Listing Policy.

The Part 1 SQOs (both the existing and proposed objectives) establish objectives that address sediment chemistry, sediment toxicity, benthic community health, wildlife, and finfish. The State Listing Policy approach to these issues is now outdated. Per the Clean Water Act, identifying waters as impaired and thus requiring the development of TMDLs is predicated upon a determination that waters do not meet *applicable water quality standards*. Clearly the Part 1 SQOs are now the applicable standards that should be used in future 303(d) listing determinations.

Tri-TAC requests that the SWRCB insert language in the Resolution adopting the proposed amendments to the Part 1 SQOs that commits to the rapid development and adoption of amendments of the State Listing Policy to ensure consistency between the Listing Policy and the Part 1 SQOs. Suggested language is as follows:

As stated in Resolution 2008-0070, the State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development. The State Water Board recognizes the need to ensure that the listing policy and this plan are consistent. The State Water Board will, therefore, initiate development of amendments to the 303(d) listing policy to ensure consistency with this plan. Amendments to the 303(d) listing policy will be considered for adoption in 2011.

Again, Tri-TAC thanks you for the opportunity to provide these comments.

Sincerely,



Ben Horenstein
Tri-TAC Chair