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## ***URGENT (ORANGE)*** ***SCAP ALERT***

**TO:** SCAP Member Agencies and Water Issues Committee Members  
**FROM:** Raymond C. Miller, Executive Director  
**DATE:** January 29, 2004

### **Public Hearing** **303 (d) Draft Listing Policy**

**Thursday, February 5, 2004 – 10 a.m.**

**Torrance Community Meeting Hall**  
**Torrance Cultural Arts Center**  
**3330 Civic Center Drive, Torrance, CA**

SCAP members have requested key talking points to assist in individual agency comments on the 303 (d) Listing Policy and the draft functional equivalent document. We encourage our members to attend the hearing and comment. Written comments are due on February 11, 2004.

If you have a local example to share that supports the main points, please present it. Real situation/experience is extremely powerful testimony.

#### Main Points to make regarding the Dec. 2003 Draft Listing Policy

1. We commend the SWRCB staff for all of their hard work done to develop the proposed Listing Policy. We strongly support the State Board's goal of establishing a standardized approach for assigning water bodies to the state's 303(d) list. We endorse the inclusion of requirements for data quality and quantity, requirements for consistent and statistically valid data evaluations, and implementation provisions. We also strongly support the elements of the Policy that will ensure that the listing process is "transparent," including the requirements for fact sheets, public hearings by Regional Boards, and opportunities to comment when the list goes before the State Board.
2. Structure of the List – The SWRCB has moved away from an "integrated" water quality assessment report format as was proposed in the July 2003 Draft Policy for Guidance on Assessing California Surface Waters. We believe that the SWRCB should go back to including on the 303(d)

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list only those waters that do not attain water quality standards due to pollutants and for which a TMDL is required. Other categories of waters, such as those with TMDLs already completed or with enforceable programs in place to bring the water into attainment, should be placed on separate lists. The current proposal is a more sweeping approach, which is problematic because of the implications of placing waters on the list (e.g. that a TMDL must be completed, interim permitting issues, etc.). In addition, this approach will result in a larger list, thus creating a greater impression of poor or declining water quality in California than may actually be warranted.

3. Need for a Planning or Monitoring List – We strongly support the establishment of an official “planning/monitoring” list, separate from the 303(d) list. The Dec. 2003 Draft Listing Policy does not include the concept of a "planning/monitoring" list, which was established during the 2002 listing cycle, and included as part of the July 2003 Draft Policy. A planning list is important for:

- Cases where the impairments are undetermined (e.g., unknown toxicity)
- Cases where data are insufficient to determine if impairment exists
- Cases where water quality standards may be inappropriate

Water bodies on the planning list would need to be further studied before being placed on the 303(d) list if impaired or de-listed if not impaired. Use of a planning list has been strongly recommended by the National Academy of Sciences (NAS) in its report to Congress and would avoid inappropriate listings, unnecessary TMDLs, and unwise use of resources.

4. Re-evaluation of Previous Listings – We commend the Board for providing a mechanism for re-evaluation of water bodies identified on previous 303(d) lists using the Listing Policy once it is finalized. Many listings included on previous 303(d) lists may be inappropriate because of:

- Inadequate data quantity or quality;
- Evidence that natural sources have caused or contributed to the impairment; and/or
- Water quality standards upon which listings were based are inappropriate.

However, to ensure that TMDLs are conducted only where appropriate and necessary, we request that the Board require a re-evaluation of water bodies identified on the 2002 303(d) list, when requested to in writing by an interested party (with the burden on the party to make the case as to why the listing should be found to be invalid or inappropriate), and not limit the re-evaluation solely to instances where new data or information are available. This recommendation is consistent with the July 2003 Draft Policy and will assist in prioritizing scarce state resources.

5. Trends in Water Quality and Alternate Data Evaluation – We are concerned that two sections of the draft policy (*Trends in Water Quality* and *Alternate Data Evaluation*) may create mechanisms for listing water bodies that are not based on sound data quality and quantity requirements and statistically valid data evaluations. For example, trends in water quality may be linked to hydrologic conditions (e.g., drought) rather than increases in pollutant loading or degradation of water quality conditions. We encourage the State Board to carefully address these concerns and develop a policy that ensures that objective methods are used to evaluate impairments and that 303(d) listings are both scientifically defensible and appropriate.