

STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

Dr. Deborah Swackhamer, Chair
EPA Science Advisory Board (1400F)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

March 16, 2010

Re: Draft SAB Panel Report: SAB Ecological Processes and Effects Committee's draft Review of Empirical Approaches for Nutrient Criteria Derivation

Dear Dr. Swackhamer,

We appreciate having the opportunity to comment on the SAB Ecological Processes and Effects Committee's ("Committee") report, and we recognize the substantial investment that the Committee has made in an effort to improve guidance for developing nutrient criteria.

Colorado's Water Quality Control Division is poised to propose numeric nutrient criteria for consideration by the Colorado Water Quality Control Commission in 2011. We have been working on developing these proposed criteria for nearly ten years. While we do not depend on empirical methods entirely for criteria, we plan to include this approach in our criteria development process. Thus, we are grateful for the national attention to this issue. However, we are concerned that aspects of the draft report may result in misleading impressions. We have two general comments described below.

Keep the Guidance Narrowly Focused: It was not, and should not be, EPA's goal to produce and over-arching guidance document that addresses all aspects of nutrient criteria development. By recommending that EPA expand the document to provide more thorough treatment of the context for nutrient criteria development, the Committee has raised doubts about aspects of nutrient criteria development that go beyond the scope of this review. The result will likely be a long delay in providing timely and succinct guidance on the empirical approaches, as per the original objective for the document.

Acknowledge Role of States and Tribes: The Committee draft report overlooks the role of States and Tribes in criteria development. The relationship between uncertainty and the tiered approach is valuable, but there is no acknowledgment that the acceptable level of uncertainty is likely to be a policy decision. Moreover, there seems to be some expectation that EPA will dictate those policy decisions. States and Tribes have the responsibility for developing those criteria and have considerable latitude in applying methods that are scientifically defensible. The role of EPA

technical guidance regarding Empirical Approach is to make states and tribes aware of tools that can be applied to a specific task.

Thank you again for your hard work on this issue.

Sincerely yours

Sarah Johnson
Standards Unit Manager
Colorado Water Quality Control Division