

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List)

Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Commenter
1.	American Rivers
2.	California Association of Sanitation Agencies
3.	California Coastkeeper Alliance Klamath Riverkeeper Humboldt Baykeeper Russian Riverkeeper Los Angeles Waterkeeper Monterey Coastkeeper San Luis Obispo Coastkeeper Ventura Coastkeeper San Diego Coastkeeper San Francisco Baykeeper Orange County Coastkeeper Inland Empire Waterkeeper
4.	California Trout Trout Unlimited
5.	Center for Biological Diversity
6.	Earth Law Center California Sportfishing Protection Alliance Living Rivers Council Coast Action Group Karuk Tribe Pacific Coast Federation of Fisherman's Associations

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

	Environmental Law Foundation Klamath Riverkeeper Friends of the Eel River Russian Riverkeeper
7.	General Public
8.	North Coast Stream Flow Coalition
9.	Planetary Solutionaries
10.	Quartz Valley Indian Reservation
11.	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region
12.	Santa Barbara Channelkeeper
13.	United States Environmental Protection Agency, Region IX

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
1.0	American Rivers	Sufficient flow is a parameter that is essential to protecting the physical, chemical, and biological quality as well as many of the designated uses of the water bodies and has been recognized by the U.S. Environmental Protection Agency (EPA) as a non-pollutant cause of impairment. Flow alteration plays a significant role in the degradation of water quality conditions and failure to support designated beneficial uses such as cold freshwater habitat in water bodies throughout California, thus warranting inclusion of the formal identification of flow alteration as a cause of impairment under Category 4c in the Integrated Report.	<p>Sufficient flow is necessary to protect water quality and beneficial uses of water. “Pollution,” such as lack of adequate flow, may cause impairments to water quality standards. Specifically, reduced flows can cause or contribute to impaired water quality conditions, such as elevated water temperatures, increased pollutant concentrations, degraded recreational opportunities, and reduced habitat area and/or volumes.</p> <p>State law recognizes the connection between flow and water quality. The Legislature specifically identified its intention to “combine the water rights and water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established” when it created the State Water Resources Control Board. (Wat. Code, § 174.)</p> <p>The State Water Board has broad authority to</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>consider water quality and pollution when it makes water allocation determinations. (Wat. Code, §1258.) The State Water Board has significant experience both setting and implementing flow criteria through water right actions, including its Bay-Delta Program and its Policy for Maintaining Instream Flows in Northern California Coastal Streams. The State Water Board also has experience setting flow requirements as part of its responsibility to certify that the operation of hydropower facilities subject to Federal Power Act licensing meet water quality standards. Those actions are always controversial and frequently involve differences of opinion among scientists, who testify under oath, as to appropriate flow criteria in those proceedings.</p> <p>The State Water Board has previously recognized that its major rivers are over-allocated and adversely impacted by flow alterations (see for instance Strategic Plan Update 2008-2012, State Water Resources Control Board, September 2, 2008, p.10). However, the extent of the impact on instream beneficial uses of a stream depends on the unique circumstances of each situation and</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>requires knowledge of other factors impacting the physical and biological integrity of the watercourse, including physical impediments to fish passage and sediment recruitment (dams and culverts, in addition to natural impediments such as waterfalls and landslides), the source of the water accreting to the stream (is it cool groundwater or is it warm runoff from open lands), the location and physical effect of diversions relative to habitat, and other factors that affect pollution.</p> <p>Pursuant to the above-cited state law, the State Water Board is expressly required to consider water quality and pollution when making water rights determinations. The converse is not true, however, with regard to the federal law directly applicable to developing the Integrated Report. The federal statutory directives pursuant to CWA 303(d) and 305(b) require states to report on the water quality necessary to provide for fish, wildlife, and recreational opportunities and other beneficial uses. In fulfilling its reporting obligations pursuant to CWA 303(d) and 305(b), the federal statutes do not expressly require the</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>states to consider flow, pollution, or allocation of water rights, when reporting on standards attainment. Clean Water Act (CWA) section 305(b), combined with the section 303(d) reporting requirements, comprises the California Integrated Report (Integrated Report). Those reporting requirements establish a process for states to use to develop information on the quality of their state's waters.</p> <p>CWA section 305(b) is the principle means by which U.S. EPA and the public assess whether waters meet water quality standards. The report is used by U.S. EPA to inform Congress on the quality of navigable waters and their tributaries nationwide.</p> <p>CWA section 305b requires states to report on:</p> <p>“[A] description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water [...].</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>“[A]n analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water.”</p> <p>“[A]n analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreations activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary.”</p> <p>(CWA § 305(b)(1)(A)-(C); see id. at § 305(b)(1)(D) & (E) (describing economic and environmental reporting requirements).)</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>U.S. EPA describes the section 305(b) reporting goals at:</p> <p>http://water.epa.gov/type/watersheds/monitoring/upload/2003_07_24_monitoring_305bguide_v1ch1.pdf ,</p> <p>and provides 2006 Integrated Report Guidance here:</p> <p>http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/2006IRG_index.cfm.</p> <p>As provided in the above U.S. EPA reference material, the primary purpose of the 305(b) and 303(d) reporting requirements is to determine the extent waters are attaining standards, identify waters that are impaired and need to be added to the 303(d) list and placed in Category 5 for the development of a total maximum daily load (TMDL), and identify waters that can be removed from the list when standards are attained.</p> <p>The guidance U.S. EPA developed for states to implement the Integrated Report consistently</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			<p>provides that segments should be placed in Category 4c when “the [S]tates demonstrate[] that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution” such as lack of adequate flow. (See Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Section 303(d), 305(b) and 314 of the Clean Water Act (July 29, 2005).</p> <p>In making decisions concerning standards assessment, it is imperative that the State Water Board undertakes a structured framework regarding its assessment and listing methodology and also provides information on the content of such methodologies.</p> <p>It may be appropriate to assess flow alteration pursuant to section 305(b) to the extent it could be used to support water quality decision-making. However, without a defined methodology for assessing non-pollutant related pollution, Water Board staff does not have a consistent and transparent approach to analyzing the extent to which flow-related alterations cause or impact</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			water quality standards. The decisions made by the State and Regional Water Boards must be based on a methodology that provides all stakeholders with the opportunity to understand exactly how assessment decisions are made. The State Water Board's listing determinations must be supported by documentation that explains the analytical approaches used to infer true segment conditions. (See U.S. EPA's 2006 Guidance for Assessment and Listing, p. 29 (explaining what constitutes an assessment methodology and U.S. EPA's review of a state's methodology for consistency with the CWA and a state's water quality standards).) In addition to recognizing U.S. EPA's recommendation that segments be placed in Category 4c when the cause is solely due to pollution, and given the uncertainties associated with determining appropriate flow criteria to be used as a threshold for determining impairment, the State Water Board does not believe that placing segments in Category 4c of the Integrated Report is warranted. Neither is such a reporting format an appropriate use of its limited resources, particularly considering the State Water Board's broad authority to address

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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			flow issues through its other legal authorities, which unlike information provided in the Integrated Report, have the potential to result in flow improvements through voluntary or regulatory action.
1.1	American Rivers	American Rivers respectfully disagrees with the SWRCB's interpretation of the EPA's 2006 Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (EPA Guidance) specific to the categorization of waters in multiple categories for the same waterbody segment. The SWRCB misinterprets EPA Guidance by asserting that the example provided by the EPA is the only situation in which an impaired segment may be placed in Category 4c. In this portion of the EPA Guidance, the EPA is merely providing an example and is not implying that segments that are impaired solely due to lack of adequate flow or to stream channelization are the only conditions in which an impaired segment may be placed in Category 4c. EPA Guidance clearly states that waterbody segments not only can, but should, be included in more than one reporting category.....For	<p>The State Water Board has not indicated that it is bound to U.S. EPA's guidance. Additionally, the State Water Board disagrees with the commenter's interpretation of U.S. EPA's Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act, which is excerpted in the Staff Report at page 10. U.S. EPA's guidance at section V.G.3 (pg. 56) states:</p> <p style="padding-left: 40px;">Segments should be placed in Category 4c when the [S]tates demonstrate[] that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution. Segments placed in Category 4c do not require the development of a TMDL. Pollution, as defined by the CWA is 'the man-made or man-induced alteration of the chemical, physical, biological, and</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>example, if a water body is impaired by a pollutant (e.g., temperature) and pollution (e.g., flow alteration), then the water body would be listed in Category 5 for temperature and Category 4c for flow alteration.</p>	<p>radiological integrity of water' (section 502(19)). In some cases, the pollution is caused by the presence of a pollutant and a TMDL is required. In other cases, pollution does not result from a pollutant and a TMDL is not required. States should schedule these segments for monitoring to confirm that there continues to be no pollutant associated with the failure to meet the water quality standard and to support water quality management actions necessary to address the cause(s) of the impairment. Examples of circumstances where an impaired segment may be placed in Category 4c include segments impaired solely due to lack of adequate flow or to stream channelization.</p> <p>(Page 56, emphasis added.) In California waterbody-pollutant combinations are assessed consistent with the Water Quality Control Policy for developing the California's Clean Water Act Section 303(d) List (Listing Policy) to determine the overall use support rating. That overall use support rating is used by the California Water Quality Assessment Database (CalWQA) to</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>determine the overall Integrated Report Category for the waterbody as a whole.</p> <p>The State Water Board interprets the U.S.EPA guidance to indicate that a waterbody should not be placed into Category 4c if there is a pollutant based impairment identified to be impairing water quality that requires a TMDL. The waters for which flow information has been submitted for inclusion into Category 4c are all identified in the Integrated Report as impaired due to pollutants under Category 5, 4a, or 4b. Waterbodies impaired by pollutants, such as temperature, and also by flow modifications will be addressed by TMDLs for the pollutant. To the extent that the pollutant is affected by flow, the Regional Water Boards will work with the State Water Board through its Division of Water Rights to determine the extent to which a water right action can improve the pollution impairment and the appropriate implementation action.</p> <p>Additionally, U.S. EPA submitted a comment letter regarding the State Water Board's consideration of the CWA 303(d) List stating:</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>“EPA commends the Regional Board and State Board staff for the transparency of the process with respect to data used in the assessment and the applicable standards.” U.S. EPA also explained that the purpose behind its substantive listing recommendations to the State Water Board was designed to ensure that U.S. EPA’s approval of the CWA 303(d) list could occur without U.S. EPA making changes subsequent to the State Water Board’s approval. Notably, while U.S. EPA noted disagreement with certain listings or delistings proposed in the Staff Report, U.S. EPA stated no disagreement with the Staff Report’s assessment of flow related data and information. U.S. EPA has final review and approval authority of California’s CWA 303(d) List before it becomes effective.</p>
1.2	American Rivers	There are multiple circumstances in which waterbodies can, and should, be identified as impaired by flow alteration immediately utilizing existing information to develop site-specific criteria. These circumstances include specific waterbody segments that already have the necessary information available to make a clear	<p>See Responses to Comments 1.0 and 1.1.</p> <p>The development of site-specific criteria related to flow is encouraged and would facilitate assessment of flow related impairments. However, the development of such site-specific criteria related to flow is outside the scope of the</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		determination that flow alterations are a causal factor of a pollutant impairment or are the source of non-pollutant impairment of a designated beneficial use.	development of the Integrated Report. State Water Board staff and Regional Water Board staff (collectively the Water Boards) did not find that there was a clear determination that flow alterations are the sole cause of impairment to beneficial uses.
1.3	American Rivers	Flow conditions which have been identified as a causative factor to pollutant impairments listed in Category 5, should be acknowledged within Category 4c. This approach is important for information purposes and is directed by the EPA in their Guidance.	See Responses to Comments 1.0 and 1.1.
1.4	American Rivers	While the SWRCB currently does not have a standard methodology for making this determination, there are waterbody segments where beneficial uses for aquatic species are clearly not being met due to complete elimination of stream flow or stream flow that is so limited as to make a segment of the waterbody unusable to salmonids or other species. These waterbody segments should be acknowledged in Category 4c immediately.	See Responses to Comments 1.0 and 1.1 The State Water Board and North Coast Regional Water Board (North Coast Water Board) staff could not clearly determine if the beneficial uses of a water quality segment were impaired solely due to stream flow or lack thereof. In many water segments, flow is seasonal resulting in dry periods during the summer months. If interpretive guidance or a clear methodology was developed to examine flow and other forms on non-pollutant related pollution, Water Board staff would have a transparent and consistent way to characterize

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			beneficial use impairments caused by such pollution.
1.5	American Rivers	We appreciate the variety of realms in which the SWRCB currently acknowledges flows and would like to point out that the actions listed by the SWRCB in pages 11 through 13 of the Integrated Report are specifically connected to surface water rights. While these efforts play an integral role in the maintenance and management of flows and should be continued, they are geographically specific and have limited recognition of the impact of flow alteration on water quality conditions. The acknowledgement of flow alterations within the context of the CWA mandated Integrated Report provides the SWRCB with a unique opportunity and responsibility to acknowledge the status of flow conditions in the context of water quality. Utilization of category 4c to identify impairments caused by flow alteration will provide information that is useful for both local and national prioritization assessment that informs funding allocations and policy recommendations. Additionally, the identification of flow impairment through category 4c listing provides an important tool that can be utilized for	<p>See Responses to Comments 1.0, 1.1, and 1.4.</p> <p>The State Water Board acknowledges that flow alterations can and do affect water quality and impair beneficial uses in California. In some cases, augmentation of flow in stream from upstream reservoirs improves water quality by intentionally or incidentally providing dilution or hydrostatic barriers to seawater intrusion that would impair instream and other beneficial uses, particularly during dry seasons or years. In other cases too much or too little flow as a result of water supply alterations and operations causes water quality impairments.</p> <p>The waters proposed for inclusion into Category 4c are all identified as impaired due to pollutants under Category 5, 4a, or 4b. If a waterbody is currently on the 303(d) List, stakeholders should be able to utilize that information to influence planning, policy, and permitting decisions. Additionally, the data and information pertaining to flow within the possession of the commenter</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

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		<p>local land use planning decision making and permitting via a nexus with CEQA that is not currently available via approaches to flows that are specific to the SWRCB's own efforts to allocate and enforce surface water rights.</p> <p>The ability of local entities to utilize information provided by the SWRCB through the Integrated Report to make informed planning and policy decisions will become increasingly important over time as the State's water resources are further strained by demand and climate conditions. Additionally, it is anticipated that there will be an increasing local interest in water supply conditions as implementation of the Sustainable Groundwater Management Act places local entities in an ever increasing position of responsibility to effectively manage groundwater resources while recognizing surface and groundwater connections.</p>	<p>may be directed to the appropriate public agency to be utilized for local land use planning and decisions that are subject to CEQA.</p> <p>Commenter's acknowledgement and explanation about the value of the State Water Board's Integrated Report, while arguably distinct and separate from the actual purposes of the development of the report, underscores the importance that placement of waters in Category 4c is done in accordance with developed, sound, and scientifically defensible methods.</p>
2.0	CASA	The State Water Board notes that future metals assessment will be made for the dissolved fraction using the California Toxics Rule (CTR) conversion equations. CASA agrees that regardless of the end data result, the dissolved	Comment noted.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		fraction or total, the metals data must be considered as one line of evidence (LOE) to make listing and de-listing recommendations. CASA also agrees that the dissolved fraction is the most appropriate form of the metals to use for listing decisions.	
2.1	CASA	The Clean Water Act Section 303(d) portion of the California Integrated Report addresses impairments by pollutants. As the Staff Report acknowledges, it is inappropriate to include surface flows in the 303(d) portion of the report because flow is not a pollutant. CASA supports the State Water Board staff's recommendation to not treat lack of flow as a pollutant and to delist any flow related listings in the applicable future listing cycles. Further, CASA also agrees with the State Water Board staff's recommendation to not address flow related impairments with the Clean Water Action Section 305(b) portion of the California Integrated Report at this time since further research and inter-agency coordination is required.	Comment noted.
2.2	CASA	The Colorado River Region's Basin Plan does not contain pyrethroid objectives; however, the proposed 2012 303(d) List contains	Based on the administrative record pertaining to the adoption of the CWA section 303(d) List by the Colorado River Basin Regional Water Quality

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>recommendations to list malathion, bifenthrin, and cypermethrin. These listing recommendations are based upon criteria developed by UC Davis. CASA would like to note that there are a number of technical shortcomings in the UC Davis criteria. First, the chronic toxicity criteria are not based on actual data; instead, a default acute to chronic ratio was applied. Second, it is well documented that pyrethroid sensitivity has a significant inverse temperature relationship, but this relationship was not accounted for in the criteria derivation. Lastly, the criteria were developed assuming that all of the pyrethroids would be in the dissolved fraction, which is a poor assumption for pyrethroids since they have low solubility and tend to strongly associate with solids. In short, all of these technical shortcomings combined result in unnecessarily overly stringent criteria. Further, the Staff Report notes that since conversion of a whole water concentration to a dissolved concentration is not possible due to lack of information, the whole water concentrations were used for assessment, adding yet another margin of safety.</p>	<p>Control Board for waters within its region, CASA <u>did not</u> submit any written comment, evidence, or testimony prior to such adoption.</p> <p>The version of the Listing Policy then applicable (adopted 2004) provides (at section 6.1.3) that the Regional Water Board may assess and determine the appropriate evaluation guidelines to use to assess narrative water quality objectives, which it did here and for which the State Water Board finds to be consistent with the Listing Policy. The time at which commenter should submit argument and evidence in support of the Regional Board utilizing a different evaluation guideline would most appropriately be during public participation process and hearing of the Regional Board. Additionally, the Listing Policy also provides, “Requests for review of specific listing decisions must be submitted to the SWRCB within 30 days of the RWQCB’s decision.” (See Section 6.3.) Adhering to that process requirement, which was not done in this case, is the appropriate manner to appeal a listing decision made by the Regional Board. Nevertheless, the State Water Board provides the following response:</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>Instead of using the UC Davis criteria, CASA recommends using the criteria developed by the US Environmental Protection Agency (USEPA) Office of Pesticide Programs (OPP). OPP develops criteria, called aquatic life benchmarks, which are based on peer-reviewed studies required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These benchmarks represent allowable environmental levels of various pyrethroids that, in turn, the California Department of Pesticide Regulation (CDPR) utilize to evaluate environmental risk during registration and re-registration in California. In the end, CASA strongly urges the State Water Board and Regional Water Boards to work with CDPR (as specified in the Management Agency Agreement Between the State Water Board and CDPR) and USEPA to address pesticide water quality issues since they are ultimately responsible for ensuring that water quality is not adversely impacted by pesticide use.</p>	<p>The Basin Plan for the Colorado River Basin (at p.3-2) contains a narrative water quality objective for toxicity that states “All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in human, plant, animal, or indigenous aquatic life.”</p> <p>State and Regional Water Board staff utilizes the most up to date and protective evaluation guidelines to evaluate narrative water quality objectives consistent with Section 6.1.3 of the Listing Policy.</p> <p>The Staff Report provides that the evaluation guidelines used for assessments include the UC Davis Aquatic Life Water Quality Criteria and the U.S. EPA Office of Pesticide Programs Pesticide Ecotoxicity Database. The UC Davis water quality criteria are a peer reviewed and published criteria document that meets the requirements of Section 6.1.3 of the Listing Policy. Furthermore, the UC Davis criteria have been used in the U.S. EPA promulgated TMDL for Pesticides, PCBs,</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>and Sediment Toxicity in Oxnard Drain 3.</p> <p>In the UC Davis method, the use of default acute to chronic ratios was determined to be the best available approximation of chronic criteria in the absence of larger chronic data sets. The use of default acute to chronic ratios was peer reviewed and is based on guidance in the U.S. EPA Great Lakes methodology.</p> <p>While it is not possible to quantify the effects of all variables that can affect toxicity in developing criteria, such as temperature these factors are accounted for through the application of safety factors, as in the UCD criteria development. The UC Davis criteria documents acknowledge that the freely dissolved concentrations of pyrethroids are the most bioavailable, but that this information is not always available so environmental managers may choose to use total concentrations as a conservative assumption.</p> <p>All of the aspects of the UC Davis criteria discussed above in this response were included in the peer reviewed criteria, which staff have</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>determined to be appropriate to use as evaluation guidelines under Section 6.1.3 of the Listing Policy.</p> <p>The U.S. EPA Office of Pesticide Programs' benchmarks are based on the most sensitive toxicity value for each benchmark category, and typically examine smaller data sets for a limited number of species. The benchmarks provide a less robust guideline for assessing attainment of the narrative objective when compared to aquatic life criteria that have been developed using a full species sensitivity distribution, such as the UC Davis criteria. The U.S. EPA Office of Pesticide Programs benchmarks do not account for temperature effects or binding to solids.</p> <p>State and Regional Water Board staff will continue to seek and utilize the most robust and up-to-date science to assess and protect beneficial uses in future listing cycles. Further, Water Boards staff agrees that there is a need for continued work with CDPR and U.S. EPA, and staff will continue to work with CDPR and U.S. EPA on issues of joint interest.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
2.3	CASA	It would be premature to list according to 2012 USEPA recommended bacteria criteria for REC-1 until the criteria are adopted into the Water Quality Control Plan for Ocean Waters of California and the Regional Water Quality Control Plans for Inland Waters. Additionally, the USEPA 2012 water quality criteria for REC-1 bacteria are recommended criteria and may not necessarily be adopted; therefore, any listing or delisting recommendations should be assessed according to water quality criteria specified in the current water quality control plans.	See Response to Comment 2.2. As stated on Page 7 of the draft Staff Report. The U.S. EPA 2012 Criteria for Recreational Water Quality was not used in the development of the 303(d) List portion of the 2012 California Integrated Report.
2.4	CASA	The Staff Report introduces a new concept for determining if a beneficial use is “supported.” Specifically, the State Water Board staff encouraged Regional Water Boards to employ an extra condition in the 2012 Listing Cycle that requires a monitoring data set to consist of at least 26 samples for conventional pollutants and at least 16 samples for toxic pollutants in order for a use to be considered “supported.” Since the process for determining individual and overall beneficial use support ratings affects how listings are made for various water segments, CASA believes it would be more appropriate to address this	State Water Board staff did not suggest the Regional Water Boards employ an “extra condition” but correctly directed the Regional Boards to apply the directives set forth in the Listing Policy. The procedure described by this comment is consistent with Tables 3.1 and 3.2 of the Listing Policy. Table 3.1 of the Listing Policy is used to determine the minimum number of measured exceedances needed to place a water segment on the section 303(d) List for toxicants. Table 3.1 states “Application of the binomial test requires a

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		procedure in the Listing Policy.	<p>minimum sample size of 16. The number of exceedances required using the binomial test at a sample size of 16 is extended to smaller sample sizes.”</p> <p>An identical statement exists for Table 3.2 (used to determine exceedances for conventional or other pollutants) with a minimum sample size of 26 required.</p> <p>The statements indicate that at least 16 or 26 samples, respectively, are necessary to determine if beneficial uses are supported. Furthermore, the tables were extended to smaller sample sizes (2 and 5 respectively) which can be used to determine if beneficial uses are not supported.</p>
3.0	California Coastkeeper Alliance	Despite years of advocacy and work to assemble relevant science, law and policy information, the Integrated Report fails to list any waterways in the North Coast as impaired due to altered flows. This is at odds with extensive evidence put before the State Water Resources Control Board and the North Coast Regional Water Quality Control Board regarding the dire state of these waterways with regard to flow. As described in our myriad	<p>See Responses to Comments 1.0 through 1.2 and 1.4.</p> <p>State Water Board staff disagrees with the commenters’ assertion that the decision to not include altered flows as part of the California Integrated Report is at odds with extensive evidence put before the Water Boards. The information submitted by the California</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>comments and data submissions, listing for flows triggers numerous important benefits for local waters, including, but not limited to:</p> <ul style="list-style-type: none"> • Higher prioritization of identified, impaired waterways on lists of bond and other funds earmarked for restoration of impaired waters. • Reduce the burden of proof in state regulatory processes that can address flow needs, such as waste and unreasonable use hearings and public trust doctrine applications. • Better support local land use and planning decisions by requiring decision makers to consider flow impacts in CEQA assessments. • Allow the state to better track and highlight the primary causes of waterway impairment. <p>Listing for flows under the 303(d) List would align official state acknowledgement of waterways impaired by a lack of flows with actual, documented conditions, as robustly supported by the scientific evidence mentioned above. Further flow impairment listings provide a long list of benefits, not just to river ecosystems and the protection of beneficial uses, but also to regional decision makers, state and local agencies,</p>	<p>Coastkeeper Alliance was reviewed by the North Coast Water Board staff and the State Water Board staff and it was determined that the data and information submitted was not of sufficient quality and/or quantity to make an adequate assessment. The application of the Listing Policy to pollution based impairments, like flow alterations, is inappropriate and outside the scope of the methodology used to develop the Listing Policy. The Listing Policy is solely applicable to the development of the 303(d) List (Categories 5, 4a and 4b) and is therefore pollutant focused. (See Listing Policy, Section 2.1 (concerning Category 5): “Waters shall be placed in this category of the section 303(d) list if it is determined, in accordance with the California Listing Factors, that the water quality standards are not attained; the standards nonattainment is due to toxicity, a pollutant, or pollutants; and the remediation of the standards attainment problem requires one of more TMDLs.” The use of the Listing Policy requires a pollutant based water quality objective and an associated numeric to interpret that objective and determine impairment of beneficial uses. Even with regard to evaluating</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		and the State Board itself. Given the escalating threats facing the region's waterways and salmonids and the length of time between listing cycles, we urge the State Water Board to take immediate action to incorporate flow listings into the 2012 303(d) List.	<p>narrative water quality objectives for pollutants, the Listing Policy (at section 6.1.3) requires that evaluation guidelines be: applicable to the beneficial use, protective of the beneficial use, linked to the pollutant under consideration, scientifically based and peer reviewed, well described, and identify a range above which impacts occur and below which no or few impacts are predicted. Furthermore, such guidelines must be responsive to principles of public participation and transparency.</p> <p>While the placement of a segment impaired by altered flows due to anthropogenic causes may be appropriate under Category 4c of the Integrated Report, without a methodology or interpretive guidance in place to make that determination, any recommendations would be made in a non-transparent and potentially inconsistent manner. The commenter's assertions of benefits are assumptions that may or may not be realized if flow alterations were included in Category 4c of the Integrated Report. Segments that are appropriately placed in Category 4c for impairments caused solely due to pollution from</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>anthropogenic actions compel no subsequent regulatory action.</p> <p>Lastly the commenter is confusing the terms “list” and “2012 303(d) List” in relation to identifying altered flows. Altered flow is defined as pollution and is not considered to be applicable under CWA section 303(d). It may be applicable under CWA section 305(b) as part of Category 4c of the California Integrated Report.</p>
3.1	California Coastkeeper Alliance	<p>California Coastkeeper Alliance was required to bring suit in 2007 to compel the Department of Fish and Wildlife and State Water Board to work together to implement mandates to set minimum flows and reflect those numbers in the approval of water rights permits. The actions subsequent to the conclusion of this matter have been hampered by lack of sufficient funding, communication and other impediments, with the result that water diversions continue – and in many places are escalating – despite the needs of waterways and fish. Immediate action is needed to – <i>at a minimum</i> – formally recognize that “no water” is a problem the state will acknowledge and act on.</p>	<p>See Responses to Comments 1.0-1.2, 1.4, and 3.0.</p> <p>State Water Board staff assumes the commenter is referring to obligations under Public Resources Code 10,000 et seq. Those requirements do not apply to implementation of the Clean Water Act, and the use of the CWA section 305(b) portion of the California Integrated Report would not be the appropriate avenue to achieve or compel such State Water Board or Department of Fish and Wildlife (DFW) action. The State Water Board does consider streamflow recommendations when it processes water right applications. It also exercises its continuing authority over water right permits and licenses as appropriate given</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			resources available, quality of data available, legal requirements, and the due process rights of diverters.
3.2	California Coastkeeper Alliance	<p>The State Water Board's failure to include any flow listings is at odds with clear law and science. The Clean Water Act, its implementing regulations and U.S. EPA Guidance, provide the overarching legal and regulatory direction for state action. Even assuming that further guidance and process on flows listings would be beneficial in close cases, the waterways that our groups identified on a priority shortlist (see list attached to comment letter) were selected because they are the most egregiously impaired due to altered flows – in some cases having no flow at all for months of the year when flows historically were regularly present.</p> <p>Continued refusal by the state to take even the most straightforward steps – such as recognizing that a dry waterbody is impaired because it cannot support fish – raises serious public trust concerns. The State Water Board is entrusted to protect public trust resources, which includes ensuring waterways continue to flow. The California</p>	<p>See Responses to Comments 1.4 and 3.0.</p> <p>State Water Board staff looked in great detail at the priority list identified by the commenter. Staff looked beyond the submitted information and could not find an adequate amount of information to support a recommendation for inclusion into Category 4c. However, if a transparent and consistent methodology for assessing pollution related impairments were in place it could facilitate future categorizations of these waters within the California Integrated Report framework. The State Water Board is working with the DFW to develop an appropriate methodology.</p> <p>Issues revolving flow are extremely complicated especially those in the North Coast area. Lack of flow can be attributed to non-anthropogenic sources such as drought or seasonal variation. A dry waterbed itself is not sufficient evidence to show impairment. Segments are appropriately</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		public trust doctrine protects navigable streams and their tributaries for a variety of uses including fishing and habitat for fish. The doctrine requires states to manage lands underlying navigable waters in trust for the benefit of the public. It creates a duty for states to protect waterways for preservation and public use.	placed in Category 4c for impairments caused solely due to pollution from anthropogenic actions yet require no subsequent regulatory action.
3.3	California Coastkeeper Alliance	The State Water Board has an affirmative duty to ensure navigable waterways – remain navigable – and preserve a waterways natural habitat. As the Supreme Court held in <i>Audubon Society</i> , and as recently reaffirmed in <i>Light v. State Water Board</i> , “no party can acquire a vested right to appropriate water in a manner harmful to public trust interests and the state has ‘ <i>an affirmative duty</i> ’ to take the public trust into account in regulating water use by protecting public trust uses whenever feasible.” Therefore, the State Water Board not only has the authority to prevent waterways to become impaired by low flows, but it has an affirmative duty to protect public trust resources to ensure navigable waterways do not become impaired from low flows. Additionally, the State Water Board’s Public Trust Enforcement Unit should take immediate action to direct water	<p>This comment extends beyond the scope of the State Water Board’s consideration of the Integrated Report.</p> <p>Nonetheless, the State Water Board has and continues to take actions related to instream flow petitions, as well as to evaluate and develop minimum flow requirements for appropriative water rights.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		users and water masters to stop dewatering streams and rivers where clear violations of the public trust doctrine have occurred.	
3.4	California Coastkeeper Alliance	The statement that the four listings on the existing 303(d) list due to flow related alterations in the Ballona Creek and Ventura River watersheds “will likely be proposed for delisting as part of the next Listing Cycle” is extremely concerning. As discussed at length in Santa Barbara Channelkeeper’s comments, the flow listings of Reaches 3 and 4 of the Ventura River for pumping and diversion accurately reflect the current diminished flows and resulting impairments to designated beneficial uses in those Reaches. The listings are legally valid, and consistent with the State Water Board’s Listing Policy. In contrast, delisting Reaches 3 and 4 from the 303(d) list as impaired for flows due to excessive pumping and diversion is inconsistent with the Listing Policy, the Clean Water Act, and facts on the ground. We urge the State Water Board to consider the substantial and significant evidence Channelkeeper references to support the existing impairment listings in its decision.	<p>In terms of process, the 4 listings are not being considered by the State Water Board during this listing cycle, which involves only decisions by the Regional Water Quality Control Boards for the North Coast, Lahontan, and Colorado River regions. The 4 listings at issue in this comment involve listing decisions from the Los Angeles region.</p> <p>Additionally, the commenter’s concern regarding the 4 listings pertains to the Staff Report’s effort to inventory the Water Boards’ actions concerning the 303(d) List and flow-related alterations. The Staff Report (at p. 9-10) states that the Water Boards have not considered the direct assessment of flow data since the adoption of the Listing Policy in 2004. The Staff Report acknowledges, however, that there were 4 listings on the existing 303(d) List related to flow-related alterations in the Ballona Creek and Ventura River watersheds (Region 4) but that those decisions were made prior to the adoption of the Listing Policy.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>The Listing Policy provides listing factors based solely on pollutant impairments. As a result, any section 303(d) listings related to flow alterations are contrary to the Listing Policy and U.S. EPA guidance and would be appropriate for reconsideration. Because the 4 segments were included on the 303(d) list due to pollution-related impairments, and not a pollutant, the Staff Report explains that the 4 listings for flow will likely be proposed for delisting in the next listing cycle.</p> <p>However, it is important to note that the 4 segments were also listed on the 303(d) List for pollutant impairments for which TMDLs have been developed: Ventura River Reaches 3 and 4 – are identified as impaired due to pumping and water Diversion. The Regional Water Board and U.S. EPA have found that those flow related impairments were addressed via the Ventura River Algae TMDL. Regarding the listings for Ballona Creek Wetlands, identified as impaired due to hydromodification and reduced tidal flushing, the Regional Water Board and U.S. EPA have found that the Ballona Creek Sediment and Exotic Vegetation TMDL are addressing the stressors</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>involved with the hydromodification and reduced tidal flushing.</p> <p>U.S. EPA tried to implement a flow TMDL for the Ventura River listings and abandoned the effort because it lacked authority to address non-pollutant impairments. Consequently, a Nutrient TMDL has been implemented that takes into account the flow impairments as a causative factor.</p> <p>The proposed CWA 303(d) list for the State Water Board's current consideration does not include listing decisions from Region 4. Any such proposed delisting in Region 4 would occur in a future listing cycle at which time the commenter may participate in that decision-making process. State Water Board staff will discuss with U.S. EPA to determine the best way to move forward.</p>
3.5	California Coastkeeper Alliance	The Staff Report lists State and Regional Water Board work underway to address flow through other programs. While we recognize these efforts and their possible precedent-setting utility to inform future efforts, it is important to note that	<p>See Responses to Comments 1.0 and 3.0.</p> <p>The commenter points out that the many board actions currently underway do not address other or all impaired waterbodies where readily</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		they cannot replace water quality related flow listings for the reasons described herein and in numerous comment letters and memos to date. The Bay-Delta Flow Criteria is specific to the Delta, and does not address other impaired waterways where readily available data exists that they are impaired due to flows. Curtailments of the Miller/Deer/Antelope creeks using the public trust doctrine were temporary drought actions that have been lifted and were region specific to the Central Valley, and does not address North Coast impaired waterways. The frost protection regulations in the Russian River and North Coast Instream Flow Policy serve to protect instream flows through restrictions on surface water rights conditions that are subject to Reasonable Use and public trust doctrines and need to be expanded into other regions where data shows waterways are impaired due to low flows. We encourage the Board to use all of the many tools at its disposal to address the pervasive flow issues that impact the rivers and streams in the priority shortlist and many others throughout the North Coast, particularly as we confront the real possibility that this drought could become the new normal.	available data exists indicating impairment due to flow. While the commenter believes that these efforts cannot replace water quality related flow listings, these are important steps that can be taken in the near term and do not rely on categorizing a waterbody as flow-impaired. Any staff recommendation to categorize the beneficial uses of a waterbody as impaired due solely to anthropogenic changes in flow may be difficult to support on a technical basis if performed without a standardized and documented methodology. Further, the effort required of Regional Water Board staff to conduct initial assessments and make recommendations on a case-by-case basis, and the subsequent effort required of State Water Board staff to understand the Regional Water Board staff assessments and recommendations will likely require staff resources far in excess of those currently available. For the above reasons relating to transparency of process, adequacy of technical analysis, and prudent use of resources, any steps that can be taken to address flow through other programs and authorities should be, and are being taken now, and the issue of flow impairment should be addressed carefully through

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		CCKA encourages the Board to use all of the many tools at its disposal to address the pervasive flow issues that impact the rivers and streams, the urgency with which conditions of dewatered waterbodies must be addressed demands direct acknowledgment by the Board how and why a lack of flows is impairing waterbodies.	<p>development of an assessment method before assessments are performed on a case-by-case basis.</p> <p>The Draft Staff Report details how the State Water Board is using the tools available to best address identified flow issues and any associated impacts to beneficial uses.</p>
3.6	California Coastkeeper Alliance	We urge the Board to list waters impaired by flow and to proactively apply the public trust and reasonable use doctrines to address the pervasive flow issues the North Coast, and state. For example, the State Water Board should apply the Reasonable Use Doctrine to agricultural water use. The Reasonable Use Doctrine is the “cornerstone of California’s complex water rights laws.” All water use must be reasonable and beneficial regardless of the type of underlying water right. The State Water Board has already determined that “more efficient and reasonable agriculture practices have the potential to <i>enhance flows</i> , reduce contaminants, and <i>minimize fish losses</i> . The Reasonable Use Doctrine can be used to promote such practices. Regardless of whether the State Water Board lists waterways for flow	<p>See Responses to Comments 1.0 through 1.2.</p> <p>Additionally, this comment extends beyond the scope of the CWA section 303(d) List portion of the 2012 California Integrated Report. However, the State Water Board will continue to explore avenues to provide adequate flows for the protection of both human and aquatic life. The use of the Reasonable Use Doctrine as the commenter points out is a key water rights mechanism and is utilized by the Division of Water Rights staff. The State Water Board will continue to promote strategies to prevent the waste and unreasonable use of the State’s water.</p> <p>The example presented by the commenter is the type of strategy that will be explored through the</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>impairments; the Board should use its broad authority under the Reasonable Use Doctrine to prevent the waste and unreasonable use from inefficient agricultural and other practices to protect instream flows.</p> <p>For example, public resources are expended to conduct stream-by-stream studies to determine, how much water fish need. However, these studies are costly and time consuming; they provide agencies an excuse to maintain the status quo of no water for fish; and even when the studies are completed, the recommended instream flows are not enforced. For example, current instream flow studies on the Scott River are designed to meet requirements of Public Resources Code 10000-10005, but not the aforementioned Reasonable Use or Public Trust doctrines. This approach allows the State Water Board to not wait for the Department of Fish and Wildlife to present their studies before taking action to get water back into streams. Instead of continuing to conduct stream-by-stream studies, the State Water Board should redesign current and future instream flow studies so they quantify</p>	<p>interagency and stakeholder meetings regarding flows and the best avenues for maintaining adequate flows.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		instream flows necessary to meet California's legal obligations under the Reasonable Use and Public Trust doctrines.	
3.7	California Coastkeeper Alliance	The State Water Board should produce a legal memo or fact sheet describing the limitations of water rights. Guidance on the Reasonable Use and Public Trust doctrines limit water rights would empower NGO advocates and water users to advance collaborative solutions. Without State Water Board guidance on the matter, local water users are unwilling to make compromises on their wasteful and unreasonable water use.	Comment noted. The application of waste and unreasonable use provisions is situational. The State Water Board will continue to enhance the information and resources it provides on its website related to waste and unreasonable use and public trust, including references or actions taken by the Board that may provide context for stakeholders.
3.8	California Coastkeeper Alliance	The State Water Board can restore instream flows by taking the following actions: (1) Develop Water Bond guidance with grant-scoring criteria that prioritizes projects that permanently dedicate water for instream use; (2) Require that water conserved with public funds be permanently dedicated to meet instream flow needs via CA Water Code Section 1707; (3) Recognize tribal cultural and subsistence use of water as "beneficial." (4) Require applicants for new water rights to demonstrate that water is available for	The commenter provides several valid avenues that may be utilized by the State Water Board. The Division of Water Quality staff will ensure that staff in the Division of Financial Assistance is aware of this suggestion. Further, staff encourages the commenter to participate in the interagency flow meetings and to continue to coordinate with the State Water Board's Division of Water Rights.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		appropriation in excess of water necessary to meet public trust requirements, potential uses of unexercised riparian water rights, and unregistered pre-1914 water rights.	
3.9	California Coastkeeper Alliance	We strongly support the designation of Little River, Widow White Creek, Martin Slough, lower Elk River, Jolly Giant Creek, and Campbell Creek to the Federal Clean Water Act's list of impaired waters as impaired by high concentrations of fecal coliform bacteria, such as E. coli. Humboldt Baykeeper has monitored, collected and submitted data to support these listings back in 2010. These areas are frequently used for swimming and other recreation, domestic water supplies, commercial oyster farms, and recreational/subsistence shellfish harvest.	Comment noted.
4.0	California Trout	Our Coalition is aware of State Water Board and Regional Water Board deliberations regarding the Listing of water bodies on the CWA Section 303d list (Category 4c) for flow impairment. While we do not directly dispute evidence used by Regional Board staff to omit listing of waterbodies due to flow impairments, we agree with the Integrated Report's acknowledgement that "there is no	Comment noted. To clarify, Water Board staff engaged in discussions, as did board members, but there were no deliberations or decision making which would require public notice or meeting in accordance with the Bagley-Keene Open Meeting Act.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Regional or State water quality objective, narrative or numeric, related to flow, and that lack of such a methodology for assessing flow impairments makes appropriate listing determinations difficult.	
4.1	California Trout	The State Water Board should support the Regional Water Board's upcoming March 11, 2015 workshop to consider a regional approach to evaluate flow alteration impairment through the Integrated Report process and support the Regional Boards efforts to conduct in stream flow studies and develop flow objectives.	<p>The State Water Board fully supported and participated in the workshop at the North Coast Water Board on March 11, 2015. State Water Board Member Steve Moore is the State Water Board liaison to Region 1 and participated in the meeting. State Water Board staff from the Division of Water Rights, Division of Water Quality, and Office of Chief Counsel also presented information at that workshop.</p> <p>The goal of this workshop was to present water quality regulatory approaches to address low flows, with particular focus on the development and implementation of flow objectives. The workshop was not intended to address the development of a statewide approach to evaluating flow impairment.</p>
4.2	California Trout	Support efforts to identify funding sources to support expanded flow measurement efforts throughout coastal water sheds (for example,	The State Water Board is committed to exploring potential funding sources to help support efforts related to flow issues.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		through appropriate use of Proposition 1 funds).	
4.3	California Trout	State Board should consider approaches that can be effectively applied across the diverse and complex hydrology of the coastal California watersheds without undue expenditure of limited resources. An approach relying only on site-specific flow studies would be exceedingly challenging, exhaust available funding resources and require many years of studies.	Comment noted. The North Coast Water Board workshop on March 11, 2015 prompted discussion of regulatory approaches for addressing the diverse and complex hydrological factors associated with flow. The meeting had a particular focus on regional flow objective development that could be used to focus limited resources.
4.4	California Trout	We encourage State Board to adopt a regionalized approach similar to the North Coast Instream Flow Policy immediately on an interim basis followed by a thorough review and validation. We seek to work with Regional and State Water Board staffs to consider our approach.	<p>A regionalized approach to addressing flow criteria was discussed at the March 11, 2015 North Coast Water Board workshop.</p> <p>The State Water Board will draw on what has been learned through implementation of the North Coast Instream Flow Policy in considering future actions that may apply to other areas of the state.</p> <p>Further, the Division of Water Rights continues to investigate and develop regional methods to determine appropriate streamflows, which could be used to adopt principles and guidelines for maintaining instream flows in areas of the state other than those covered by its instream flow</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			policy, as authorized by Wat. Code section 1259.4, subd. (a)(2).
4.5	California Trout	In closing, we welcome the opportunity to work with State and Regional Water Board staff to participate in a working group with inter-agency coordination from CDFW, the Division of Water Rights, the Division of Water Quality, and other stakeholders to develop a strategy to help protect the State's public trust resources now being threatened by depleted low flows.	Comment noted.
5.0	Center for Biological Diversity	The State Board has failed to consider ocean acidification in its water quality assessment, counter to EPA's recommendations and the requirements of the Clean Water Act. The Board must solicit and evaluate data on ocean acidification and identify water segments that are violating water quality standards.	<p>The Listing Policy in effect for this listing cycle (adopted 2004) provides, "Requests for review of specific listing decisions must be submitted to the SWRCB within 30 days of the RWQCB's decision." (See Section 6.3.) Adhering to that process requirement, which was not done in this case, is the appropriate manner to appeal a listing decision made by the Regional Board. Nevertheless, the State Water Board provides the following responses:</p> <p>When Water Board staff conduct an assessment of water quality for the California 305(b) reporting and 303(d) listing, Water Board staff reviews the data and information collected from monitoring</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>locations around the state that meet the assessment methodology described in the Water Quality Control Policy for Developing California Clean Water Act Section 303 (d) List (Listing Policy)</p> <p>(http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/ffed_303d_listingpolicy093004.pdf). If data show that water quality does not meet the applicable water quality standard for a pollutant, the water body segment is listed on the 303(d) list, which requires a TMDL (Total Maximum Daily Load).</p> <p>The Center for Biological Diversity (Center) provided scientific papers on research showing that carbon dioxide levels are expected to rise, which will in turn cause changes in the ocean chemistry. Staff reviewed the scientific papers provided by the Center; specifically, the research conducted in Central California near Monterey Bay. The research was based on carbon dioxide experiments. As discussed in “Utility of deep sea CO2 release experiments in understanding the biology of high CO2 ocean: Effects of hypercapnia on deep sea meiofauna” Section 4,</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>Discussion, pages 12 through 15, variation in pH observed in the carbon dioxide release experiments did not allow the researchers to examine the biological impact caused by increases in carbon dioxide. It appeared that during the carbon dioxide experiments, a pH reduction of 0.6 pH units comparing to the control areas was observed, and the accuracy of the sensors was suspected. During the experiments carbon dioxide concentrations (measured as pH) varied throughout all experiments. This high variability in carbon dioxide and pH made it impossible to interpret the dose tolerance response of animals to hypercapnia that could trigger physiological stress or death for any of the animals studied. The author stated on page 15 that “understanding of the biological and ecological consequences of increased hypercapnia over shallow and deep waters of the world ocean will require knowledge of the physiological responses of organisms as a function of the severity and duration of hypercapnia.”</p> <p>The California Listing Policy requires that we consider only data and information that meet the</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>minimum quality assurance requirements as it outlined in “Data Quality Assessment Process”, Section 6.1.4 of the Listing Policy: “Even though all data and information must be used, the quality of the data used in the development of the section 303(d) list shall be of sufficient high quality to make determinations of water quality standards attainment.” The variable pH data do not meet the data quality requirements described in the Listing Policy. Therefore, the research results cannot be used for 303(d) listing.</p> <p>If data for pH specific to California's marine waters are available for assessment during the next listing cycle, that data will be evaluated under the provisions of the Listing Policy using a weight-of-evidence approach to evaluate the lines of evidence based on the applicable water quality standard. The State Water Resources Control Board and the Regional Water Quality Control Boards solicit all readily available data and information prior to the evaluation process. We encourage you to submit your data specific to California’s marine waters when solicitation for data is announced, and it will be evaluated for the</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			next 303(d) listing cycle decisions.
5.1	Center for Biological Diversity	Data submitted by the Center was not evaluated by the State Board. The Center has previously provided supporting materials on the impacts of ocean acidification and submitted scientific information supposing the inclusion of ocean waters on the 303(d) list. Ocean acidification imposes a serious threat on marine life. California should list ocean waters as impaired.	See Response to Comment 5.0.
5.2	Center for Biological Diversity	California has an independent duty to evaluate ocean acidification during its water quality assessment (Environmental Protection Agency 2010). Specifically, EPA directed states to evaluate ocean acidification data for their 2012 integrated reports (Environmental Protection Agency 2010). The Clean Water Act provides that states must “evaluate all existing and readily available water quality-related data and information to develop the list.” 40 C.F.R. § 130.7(b)(5); see also <i>Sierra Club v. Leavitt</i> , 488 F.3d 904 (11 th Cir. 2007). Beyond reviewing the information submitted by the Center, California must also evaluate pH, biological information, and other monitoring data that is available to it and	<p>See Response to Comment 5.0.</p> <p>The State Water Board’s proposed 303(d) List portion of the Integrated Report only pertains to waters within the jurisdiction of the Regional Water Quality Control Boards for the North Coast, Lahontan, and Colorado River regions.</p> <p>Pursuant to section 6.1.2.1 of the Listing Policy, the Water Boards have an obligation to seek all readily available data and information through their solicitation process, but to undertake an independent evaluation of ocean acidification beyond the data and information submitted to it. The Listing Policy was developed to establish a</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>seek out ocean acidification data from state, federal, and academic research institutions. EPA's 2010 memo and Integrated Report Guidance discussed several sources, including the National Oceanic and Atmospheric Administration data (EPA 2010: 7-9; EPA Guidance 30-31). There are now several sources for high resolution ocean acidification data.</p> <p>California has failed to meet the Clean Water Act's requirements to evaluate all readily accessible data and information on ocean acidification. To correct its integrated report and 303(d) list, the Board needs to obtain and evaluate all relevant parameters of ocean acidification data available from these sources that serve as clearinghouses for ocean acidification data, especially those that are specific to California's waters.</p>	<p>standardized approach for developing the CWA 303(d) List to achieve the overall goal of achieving water quality standards for California's surface waters.</p> <p>The Pacific Ocean overlaps jurisdictional boundaries for multiple Regional Water Boards. Since this is a national and global issue, the regions are not addressing this issue individually as it is more appropriately addressed by the U.S. EPA. To this point, the U.S. EPA recently released a document titled "Strategic Plan for Federal Research and Monitoring of Ocean Acidification" (Ocean Acidification Research Plan) which will guide research and monitoring that will improve our understanding of ocean acidification, its potential impacts on marine species and ecosystems, and adaptation and mitigation strategies.</p> <p>The State Water Board adopted an amendment to the Listing Policy, which defines (at section 6.1.1) all readily available data and information for the development of the CWA section 303(d) List as that data and information that can be submitted to</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			the California Environmental Data Exchange Network (CEDEN). The State Water Board encourages the commenter to submit California specific data into CEDEN.
5.3	Center for Biological Diversity	<p>The State Water Board must evaluate whether any of California's ocean waters must be included on the 303(d) list because current measures are not stringent enough to prevent ocean acidification and achieve water quality standards. 33 U.S.C. § 1313(d).</p> <p>California Ocean Plan at 3 (2012). These beneficial uses are not being attained by ocean waters off California due to ocean acidification.</p> <p>California must consider ocean acidification data in light of designated uses and applicable standards. The standards for chemical and biological characteristics require that:</p> <ul style="list-style-type: none"> •The pH shall not be changed at any time more than 0.2 units from that which occurs naturally. •Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded. •The natural taste, odor, and color of fish, 	<p>See Responses to Comments 5.0 and 5.2.</p> <p>Evaluating current preventative measures is beyond the scope of listing for the purposes of CWA section 303(d).</p> <p>When applicable data is submitted into CEDEN it will be evaluated and assessed consistent with the Listing Policy and applicable water quality standards.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>shellfish, or other marine resources used for human consumption shall not be altered.</p> <ul style="list-style-type: none"> •The concentration of organic materials in fish, shellfish or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health. <p>Ocean plan at 6 & 10. Finally, California's antidegradation policy requires the maintenance of existing high quality. Resolution 68-16. Ocean acidification is causing violations of these standards in certain waters of California.</p>	
5.4	Center for Biological Diversity	<p>While the state has failed to evaluate ocean acidification data, the Center's prior submissions indicate water quality problems and violations of the above standards that warrant listing. Without repeating former comments, I will urge the state to evaluate the Center's submissions as well as publicly available monitoring data on ocean acidification. Moreover, this comment focuses on new scientific data that underscores the fact that these standards are already not being attained.</p> <p>Shellfish in the California Current large marine ecosystem have experienced massive mortality</p>	<p>See Responses to Comments 5.0 and 5.2.</p> <p>The new information submitted by the commenter is outside of the solicitation for the 2012 California Integrated Report. State Water Board staff encourages the commenter to submit all applicable California data and information related to the water quality of the State's oceans into CEDEN for future assessments.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		during this water quality assessment period. Hatcheries and natural shellfish have experienced reproduction failures from California to Washington (Feely et al. 2012). A new study by Waldbusser et al. identified aragonite saturation as the factor causing limited growth and mortality for shellfish (Waldbusser & Hales 2014). Pacific oyster larvae in hatcheries in the Pacific Northwest experienced massive mortality due to ocean acidification (Barton et al. 2012). The Waldbusser follow-up study identifies saturation state as the principal cause of the adverse biological impacts (Waldbusser & Hales 2014). Notably, California already experiences levels of aragonite undersaturation that have been linked to harmful effects in shellfish (Feely et al. 2008; Gruber et al. 2012; Hauriet al. 2013). Such conditions in experiments caused a forty percent increase in deformities and death of rare northern abalone (Crim et al. 2011). Another study of Olympia oysters, a foundation species along the coast, showed that ocean acidification stunted their growth (Hettinger et al. 2012). California mussels also grew thinner and weaker shells that are more vulnerable to mortality, predation, and	

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>desiccation (Gaylord et al. 2011).</p> <p>Off of California's coast, scientists have documented harmful biological consequences in marine communities of plankton. In a recent study of pteropods in the California Current (Bednaršek et al. 2014), scientists found 53% of onshore individuals and 24% of offshore individuals to have severe dissolution damage that was correlated positively with the percentage of undersaturated water with respect to aragonite (id.). Further, scientists estimate that shell damage due to ocean acidification has doubled in near shore habitats since pre-industrial conditions and will triple by 2050 (id.). Because pteropods form the base of the foodweb, providing food for many species of fish, a decline in pteropods could have far-reaching ecosystem impacts.</p> <p>Additionally, ocean acidification has likely increased the toxicity of harmful algal blooms in Southern California that have both caused objectionable aquatic growth and concentrated toxins in seafood that are harmful to human health. The toxicity of harmful algal blooms</p>	

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>increases with ocean acidification. Ocean acidification conditions can increase toxins as much as five-fold in harmful algae that can poison marine mammals and even cause paralytic shellfish poisoning in people (Fu et al. 2012; Avery O Tatters et al. 2013; Tatters et al. 2012; Avery O. Tatters et al. 2013). The neurotoxin domoic acid in diatom Pseudo-nitzschia increased with acidification as did the toxicity of Alexandrium catenella (Id.). A -0.5pH change caused toxin production in the diatoms to increase 4.2-fold and a -0.3pH unit change increased the toxicity 2.5-fold (Tatters et al. 2012). The experiments done in these studies were at levels of CO₂ that are already occurring in California, and the increase in the toxicity of harmful algal blooms in Southern California may be consistent with ocean acidification (Id.) Already, these harmful algal blooms have been related to mass mortalities of fish and marine mammals and these studies suggest that the damage will become much worse.</p> <p>While these are a few new studies highlighted, the body of science previously submitted plus the data</p>	

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		sets recommended herein provide ample information on ocean acidification for California to evaluate against its water quality standards. A failure to do so undermines the intent and provisions of the Clean Water Act.	
6.0	Earth Law Center	The State Water Board should recognize on the 303(d) list the waterways on the Coalition's May 15, 2013 shortlist (attached) impaired for low or no flow.	<p>See Responses to Comments 1.0 through 1.2, 1.4, and 3.0</p> <p>For the current listing cycle pertaining to the State Water Board's consideration of approving the 2012 Integrated Report, the notice of solicitation was transmitted on January 14, 2010. The deadline for the submission of data and information was August 30, 2010. State Water Board staff examined and reviewed all data that was timely submitted. Data and information submitted subsequent to the deadline is not considered for purposes of the 2012 Integrated Report for this listing cycle.</p> <p>The data submitted in response to the 2010 Notice of Solicitation had identified more waters than the commenter references on its "top ten" shortlist.</p>
6.1	Earth Law Center	At minimum, list the Scott River and Shasta River, which North Coast staff found to have	See Responses to Comments 1.0 through 1.2, 1.4, and 3.0.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		sufficient information and data submitted to meet all criteria of staff suggested methodology for characterization as impaired.	<p>The North Coast Water Board staff found that the only two waters with the minimum information (four criteria identified by the Regional staff) necessary to characterize a potential impairment under Category 4c of the Integrated Report, are the Scott and Shasta Rivers. However, the North Coast Water Board further concluded:</p> <p>The Scott and Shasta rivers are both listed as impaired for temperature, the TMDLs document altered flow conditions as one of many factors contributing to the temperature impairment, and the Regional Water Board is addressing altered flow concerns in these rivers in the context of the temperature impairments. A protocol is needed for distinguishing between a water body that is impaired by a pollutant and exacerbated by altered flow conditions, versus a water body that is primarily impaired because of flow conditions....the methodology has not been vetted state-wide and has not been determined to be appropriate for assessing flow impairments through the Integrated</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>Report process. An appropriate methodology should be developed in consultation with the State Water Board, the Division of Water Rights, other regional water boards, and stakeholders. Before Regional Water Board staff can make a decision whether or not to place a water body in Category 4c for altered flows, a methodology should be in place that is scientifically defensible and repeatable so that it can be consistently applied in the Integrated Report process state-wide to determine if altered flow is causing the non-attainment of water quality standards now and in the future to any stream in the state (page 67 of the Regional Staff Report).</p> <p>State Water Board staff also evaluated these water bodies and came to similar conclusions. State Water Board staff attempted to utilize the existing methodology available in the Listing Policy using not only information that was submitted but also other information from internal and external sources. While there was sufficient information identified for these two waters, the applicability of utilizing the Integrated Report process for</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			addressing waters with flow impairments that are already impaired by pollutants has still not been fully examined.
6.2	Earth Law Center	In the alternative these (ten) “shortlist” water bodies should be listed as impaired due to altered flow on the 305(b) Report per the Clean Water Act and EPA guidance, and are an important precursor to further action under local, state and federal laws and policies to prevent further degradation and ensure the long-term health of the state’s waterways. Many other states already list waterways as impaired due to altered flow. California should catch up rather than continuing to delay proper identification of all impairments in order to keep and return needed flow in our rivers and streams.	See Responses to Comments 1.0 through 1.2, 1.4, 3.0, and 6.1.
6.3	Earth Law Center	The CWA calls for stakeholder involvement in the 303(d)/305(b) process through the submission of citizen data and comments. The Coalition and other members of the public have responded over the last four and a half years with data, lines of evidence, legal analysis, and repeated accounts of the necessity of, and practical benefits associated with, the requested flow impairment listings. Yet, virtually none of the public's input is reflected in	State and Regional Water Board staff participated in several meetings with stakeholders as indicated by the commenter, and the State Water Board agrees that stakeholder participation is a vital element to informed decision making. State Water Board staff did take into account the many conversations and information provided by the stakeholders while compiling the Draft Staff Report. The public participation and discussion

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		the Draft Staff Report on the 2012 California Integrated Report [Clean Water Act Sections 303(d) and 305(b)] (Draft Staff Report). This raises serious questions as to the effectiveness and future viability of state-citizen partnerships, which are essential to ensuring the good health of the state's waterways. This is not a one-way process; the public must be involved in both the provision of relevant local data, and in the application of impairment listings to protect local waterways.	regarding flow impairment and the Integrated Report was highly valued by staff, and staff plans to continue the coordination as it moves forward examining flow impairments.
6.4	Earth Law Center	The CWA calls for 303(d) listings where beneficial uses are impaired – whether by pollution or pollutants. California can and should choose to include flow impairments under Category 4c of its Section 303(d) list, or, at minimum, must identify flow-impaired waterways as such in the state's overall Integrated Report.	See Responses to Comments 1.0 through 1.2, and 3.0. The CWA section 303(d) requires the identification of impairments of water quality standards and the development of TMDLs to address those impairments within a reasonable time frame. Category 4c of the Integrated Report is not considered to be part of the 303(d) List of impaired waterbodies by either the State Water Board or U.S. EPA. The State Water Board considers waters in Category 4a (a TMDL has been developed), 4b (other regulatory controls obviate the need for TMDL development), and 5

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			(TMDL needed) to be those on the statewide 303(d) List while U.S. EPA considers only Category 5 waters to be part of the federal 303(d) List.
6.5	Earth Law Center	A flow objective is not necessary to make a listing for flow impairment. Water quality standards encompass both the designated uses of a water body and the water quality criteria established to protect those uses, as well as antidegradation requirements. As long as an impairment of a beneficial use can be shown, the waterway is impaired regardless of the existence of adopted criteria. Available data shows clear beneficial use impairments due to low flow for “shortlist” waterways, particularly the Scott and Shasta Rivers. These waterways should accurately be listed as impaired due to altered flow.	<p>See Responses to Comments 1.0, 1.1, and 1.4.</p> <p>The State Water Board agrees that beneficial use impairment is sufficient (with or without a flow objective) but determining the beneficial use impairment is extremely difficult for staff without a methodology in place, especially for something as complex as flow. The State Water Board and North Coast Water Board staff could not clearly determine if the beneficial uses of a water quality segment were impaired solely due to stream flow or lack thereof. In many water segments, flow is seasonal resulting in dry periods during the summer months. If a clear standard or methodology was developed to examine flow and other forms on non-pollutant related pollution, Water Board staff would have a transparent and consistent way to characterize beneficial use impairments caused by such pollution.</p> <p>The Water Boards have assessed applicable water</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>quality standards for the Scott and Shasta Rivers and the impairments are identified on the 303(d) List as follows: Klamath River HU, Shasta River HA is listed for: Aluminum (Municipal supply beneficial use), Low Dissolved Oxygen (Cold freshwater habitat beneficial use), and Temperature (Cold freshwater habitat beneficial use). The Dissolved oxygen and Temperature listings are being address by a TMDL that was approved in 2007.</p> <p>Klamath River HU, Scott River HA is listed for: Aluminum (Municipal supply beneficial use), Biostimulatory Conditions (Cold freshwater habitat beneficial use)*, Dissolved Oxygen (Cold freshwater habitat beneficial use)*, pH (Cold freshwater habitat beneficial use)*, Sedimentation (Cold freshwater habitat beneficial use), and Temperature (Cold freshwater habitat beneficial use). The Sedimentation and Temperature listings are being address by a TMDL that was approved in 2006. The listings with an asterisk are new listings proposed for this cycle.</p>
6.6	Earth Law Center	Similarly, a state-adopted methodology is not necessary to list “shortlist” flow-impaired	See Responses to Comments 1.0, 1.1, 3.0, and 6.5.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		waterways—especially the Scott and Shasta Rivers. Numerous other states successfully list for flow impairment without a standardized methodology. Even if the State Water Board insists on utilizing a methodology, the Listing Policy’s “weight of evidence” can be used to support flow listings.	The Weight of Evidence approach referenced by the commenter is more accurately referred to as the Situation-Specific Weight of Evidence Approach within the Listing Policy (at section 3.11) which may be utilized to assess standards impaired by pollutants but not pollution. The Listing Policy was designed for use with pollutant based impairments. Given the State Water Board’s broad authorities over flow, the federal government’s limited authority over flow, there is little demonstrated benefit to Category 4c impairment identification.
6.7	Earth Law Center	Sufficient data are available on multiple North Coast waterways (especially the Scott and Shasta Rivers) to find that flow alterations are causing impairment. The Draft Staff Report fails to even acknowledge the North Coast staff’s recognition of strong flow impairment data submitted on the Scott and Shasta Rivers, which met all the criteria of the North Coast staff’s suggested methodology for flow listings. The Draft Staff Report must be revised to recommend flow listings for at least the Scott and Shasta Rivers and to describe in detail the procedure and other justifications for the rejection of listings for other “shortlist”	See Responses to Comments 1.0, 1.1, 3.0, and 6.1. State Water Board staff determined that assessment for flow based impairment could not be adequately performed utilizing existing guidance and methods.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		waterways.	
6.8	Earth Law Center	The Draft Staff Report incorrectly concludes that water segments cannot be listed as flow-impaired under Category 4c when the same water segment is listed as impaired by a pollutant. To the contrary, U.S. EPA's 2006 Guidance specifically demonstrates that states using a "multi-category" reporting framework can list a waterway in both Category 4c and 5. States using a "single category" reporting framework can list a waterbody with both Category 4c and 5 impairments. For example, numerous states (such as Idaho, Ohio and Tennessee) list waterways in Category 4c for pollution even when pollutant impairments are identified for the same segment, with EPA approval.	See Response to Comments 1.0 and 1.1. .
6.9	Earth Law Center	Pollutant listings do not effectively address flow, since only pollution listings properly and directly address flow impairment. This is why EPA's 2006 Guidance distinguishes "lack of adequate flow" as a cause of impairment, rather than solely as a source of impairment.	See Responses to Comments 1.0 and 1.1.
6.10	Earth Law Center	Those waterways already listed as impaired due to altered flow in Region 4 should not be delisted	See Response to Comment 3.4.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		during the next Listing Cycle. Delisting these waterways is neither required by law nor warranted by the data that correctly justified the initial listings.	
6.11	Earth Law Center	California should choose to list waterways as impaired due to altered flow on its 303(d) list rather than the 305(b) Report. Other states take this approach, such as Tennessee (which places all impaired waterways on its 303(d) list, including those in Category 4c) and Ohio (which lists flow as a cause of impairment on its 303(d) list if there is also a pollutant impairing the waterway). If the State Water Board chooses not to take this approach, they should at least list flow-impaired waterways on the 305(b) Report.	See Responses to Comments 1.0, 1.1, and 3.0. It is State Water Board staff's interpretation that waterbodies currently listed for pollutant based impairments should not be included for pollution based impairments as well. The pollution based impairments should be addressed via the TMDL or other regulatory process. If all pollutant based impairments are eventually addressed and the pollution impairments still exist, then placement into Category 4c could be appropriate.
6.12	Earth Law Center	While the flow programs listed in the Draft Staff Report are important, they are simply insufficient to both keep water in threatened and impaired waterways and ensure that additional water is put back in those waterways. The state must allow local citizens to utilize the tools they need to protect waterways – these tools include formal flow impairment identification where appropriate.	It is unclear what can be gained from a waterbody being placed onto Category 4c for pollution impairment when that same water is already on the 303(d) List for pollutant impairment. Citizens are able to utilize the fact that these waters are already impaired due to pollutants, some of which have identified flow as a contributing factor to those impairments, as a tool to affect local projects, policy, and obtain funding for restoration.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
6.13	Earth Law Center	In addition to ensuring the proper identification of the state's impaired waterways, there are numerous practical benefits of flow listings that expand upon and complement other identified, existing programs to restore flow. These include: supporting better local land use and planning decisions that keep flow in impaired waterways, ensuring greater prioritization for restoration funding, easing of the burden of proof in state regulatory processes that can address flow needs, and allowing for the state to better track and highlight waterway impairment causes (thereby prioritizing resources to address those waterways more efficiently).	See Responses to Comments 1.5, 6.6, and 6.12. Given the State Water Board's broad authorities over flow and the federal government's limited authority over flow, there is little demonstrated benefit to Category 4c impairment identification.
6.14	Earth Law Center	A May 15, 2013 letter to the State Water Board from ELC and California Coastkeeper Alliance (CCKA) (attached for reference) further described in detail the benefits of flow listings and attached a "shortlist" of waterways believed by Coalition members and others to be "clearly and incontrovertibly impaired." After a meeting with Chair Marcus and upper management in Summer 2013, ELC provided as requested further details on the listing processes other states use to identify flow impairment. Again at the request of the State	Comment noted. The State Water Board greatly appreciates the coordinated efforts between its staff and Earth Law Center staff to determine if and how flow impairments could be included within the CWA sections 303(d) and 305(b). Ultimately, staff concluded that the lack of a consistent methodology for assessing non-pollutant related pollution within the California Integrated Report process did not allow for an affirmative determination of beneficial use impairment. This conclusion should not diminish

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Water Board, in September 2014 ELC researched and provided details on the exact categorization of the flow impairment listings in ten states around the country (i.e., Category 4c versus 5, 303(d) versus 305(b), etc.).	the discussion and collaboration between Earth Law Center and the State Water Board.
6.15	Earth Law Center	Despite years of increasingly detailed legal and factual support, however, the North Coast staff listed no waterways as flow-impaired on either the 303(d) list or the 305(b) Report. The primary cited reason in its Public Review Draft Staff Report for the 2012 Integrated Report (Public Review Draft Staff Report) was that the “Listing Policy does not provide guidance for evaluation of water quality impairments related to reduced flow.” However, as the Coalition explained in its joint April 1, 2014 comment letter to the State Water Board and at subsequent North Coast workshops in both Santa Rosa and Redding, this reasoning is flawed. The CWA, implementing regulations and U.S. EPA guidance do allow for flow listings; a specific methodology for such is unnecessary in cases where there are clear beneficial use impairments; and listings can move forward where the data support such listings. Thus the	See Responses to Comments 1.0, 1.1, 1.4, 3.0 and 6.3.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Coalition found in its letter to the State Water Board the “failure to include any flow listings to be unsupportable.”	
6.16	Earth Law Center	<p>After the North Coast’s revised Staff Report for the 2012 Integrated Report (North Coast Staff Report) was released on July 30, 2014, the Coalition submitted additional comments (attached for reference) and testified with numerous other supporters of the flow listings at the August 14, 2014 North Coast Board meeting. (Notably, no one spoke in opposition to the listings.) The Coalition supported the North Coast staff’s assessment of strong flow impairment evidence for the Scott and Shasta Rivers, but opposed the decision not to list these waterways in light of this data showing impairment. While the North Coast Board ultimately approved the 303(d) list without flow impairment listings, the Resolution’s subsection on flow (as described further below) specifically “reserves its right to modify the 303(d) List in accordance with applicable rules and regulations...” The hearing following up on this direction is set for March 11, 2015. Considering the significant, regular public</p>	<p>See Responses to Comments 4.1, 6.1, and 6.3.</p> <p>The State Water Board will consider adopting the statewide list at its April 8, 2015 meeting. The North Coast Water Board may modify decisions of its 303(d) list or 305(b) report during the next listing cycle.</p> <p>The data submitted as part of the 2012 Notice of Solicitation is available for review online at http://www.waterboards.ca.gov/water_issues/programs/tmdl/ref_menu.shtml. Further the North Coast Water Board staff report and supporting information for its Regional Integrated Report is incorporated by reference in Appendix K of the Draft Staff Report (See Staff Report, p. 25, which states:</p> <p style="text-align: center;">“The administrative record contains all records used to develop the 2012 California Integrated Report. Records are</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		involvement that has occurred for four and a half years, the Coalition is surprised that the Draft Staff Report not only recommended no flow impairment listings, but also failed to recognize the extensive arguments and information provided by the Coalition and its members, often at the State Water Board's own request. Indeed, the Draft Staff Report actually takes a step backwards from the North Coast Staff Report by failing to specifically address the strong flow impairment data available for the Scott and Shasta Rivers, data recognized by the North Coast staff. Based on the extensive information provided by the public, as well as other readily available information (which the State Water Board is required to consider), the Coalition asks that the Draft Staff Report be revised to list those North Coast waterways on the "shortlist" as flow-impaired.	any documents produced, received, owned, or used by the State Water Board and Regional Water Boards regardless of media, physical form, or characteristics. An index of the references for data and information in the administrative record used for development of the 2012 California Integrated Report is presented in Appendix K of this report."
6.17	Earth Law Center	Effective state-citizen partnerships are essential for ensuring the good health of California's waterways. Failing to recognize any waterways as flow-impaired or meaningfully respond to the specific points the Coalition and other stakeholders have raised for years questions the	See Responses to Comments 4.1 and 6.3. The State Water Board agrees that state-citizen partnerships are essential for ensuring the health of California waters and to develop current and future strategies to protect and enhance those

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		future effectiveness and viability of public-state partnerships in the context of the 303(d)/305(b) process and its implementation. The Coalition asks that the Draft Staff Report be revised to reflect the significant stakeholder involvement in the 303(d)/305(b) process, particularly by listing “shortlist” waterways as flow-impaired pursuant to Section 303(d) – especially, the Scott and Shasta Rivers – and responding to other points raised by the Coalition in these comments and previous comments.	waters. The Draft Staff Report was written in response to the stakeholder input on the topic of flow and to provide a cohesive description of the issues faced by Water Board staff with examining flow related issues within the Integrated Report framework. Water Board staff has actively participated in and encouraged communication with the stakeholders on this issue. State Water Board staff participated during the March 11, 2015 workshop and will promote the continued dialogue with stakeholders and other agencies moving forward.
6.18	Earth Law Center	<p>CWA Section 303(d)(1)(A) establishes the requirements for the 303(d) list as follows:</p> <p style="padding-left: 40px;">Each state shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.</p> <p>In other words, if (after the identified Section 301</p>	<p>See Responses to Comments 1.0, 1.1 and 6.11.</p> <p>The State Water Board disagrees with the commenter’s interpretation that pollution-caused impairments are appropriately identified on the CWA section 303(d) List. That assertion is also contrary to U.S. EPA’s guidance on developing the 303(d) list.</p> <p>Commenter’s reliance for such interpretation on CWA section 303(d)(1)(A) containing the term “pollution” is misplaced. In context, the phrase “taking into account the severity of the pollution”</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		controls are put in place) a water body’s water quality standards are not being met, then “those waters” “shall” be identified under Section 303(d) –regardless of whether due to pollutant or pollution. Indeed, Section 303(d)(1)(A), which mandates such identification of impaired waters, includes only the word “pollution.” The word “pollutant” does not become relevant until Section 303(d)(1)(C), which addresses total maximum daily loads (TMDLs). Identifying a waterway as flow-impaired under Category 4c is thus consistent with inclusion on the 303(d) list, which by the CWA’s own language encompasses “pollution.” The identification of flow-impaired waterways under Section 303(d)(1)(A) is a separate and distinct task from determining whether or not TMDLs are required to address those impairments. This latter task is described in CWA Section 303(d)(1)(C). Unlike Section 303(d)(1)(A), Section 303(d)(1)(C) does specifically reference “pollutants,” but in the context of developing a TMDL only. In other words, Section 303(d) of the CWA supports the listing of all impaired waterways – whether impaired by pollution or pollutants – and then the	<p>pertains to a state’s obligation to establish a priority ranking for such waters. CWA section 303(d)(1)(A) does not obligate states to identify flow impaired waterways as commenter asserts.</p> <p>Pollution, as defined by the CWA is “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water” (section 502(19)). In order to determine if actions are resulting in the attainment of applicable water quality standards, you must first identify an applicable water quality standard and a method for assessing attainment. In the case of pollution you must also show that it is the result of made-made alterations and that no other pollutant is causing water quality impairment.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		development of TMDLs for the pollutant impairments on the list.	
6.19	Earth Law Center	<p>The above argument was supported by North Coast Board Chair John Corbett, who stated at the August 14, 2014 North Coast Board meeting that “there is merit to the argument [under] 303(d)(1)(a) that you can list a water as being impaired as separate from particular pollutants.” Chair Corbett also stated that he thinks the reasoning presented by ELC for flow impairment listings “is right.” Chair Corbett accordingly asked that the final Resolution approving the 2012 303(d) list be amended to “add the phrase ‘and reserving the right to add to the 303(d) list. Based on the CWA, as well as the statements offered by the Chair of the North Coast Board, the Draft Staff Report should be revised to properly include “shortlist” waterways – especially the\ Scott and Shasta Rivers – as flow impaired, preferably on the 303(d) list but if not, in the 305(b) Report.</p>	<p>See Response to Comment 6.18.</p> <p>The California Integrated Report is updated on an ongoing basis. The decision to not include flow at this time does not preclude the addition of flow as part of a future Listing Cycle. Yet it is the State Water Board’s view that such characterization would occur pursuant to its CWA section 305(b) reporting obligation.</p> <p>Resolve #15 of the North Coast Board Resolution R1-2014-0043 reads, “The Regional Water Board reserves the right to modify the 303(d) List in accordance with applicable rules and regulations, including the Listing Policy.” As previously stated, it is the State Water Board’s interpretation of the Clean Water Act that pollution based impairments are not part of the section 303(d) List. The Regional Water Board can modify its 303(d) List as part of future listing cycles, but adding flow to the 303(d) List would not be in accordance with the Listing Policy or other</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			applicable rules and regulations. Water Board staff will continue to coordinate with stakeholders and other agencies to better characterize flow impairments and to determine whether and, if so, how they should be incorporated into the Integrated Report process.
6.20	Earth Law Center	A flow objective is not necessary to make a listing for flow impairment. As long as an impairment of a beneficial use can be shown, the waterway is impaired and available data show clear BU impairment. The Draft Staff Report States that “without a numeric or narrative objective to apply as an evaluation guideline, the use of current assessment methods is not appropriate” (p. 11). This is incorrect. Water quality standards encompass both the designated uses of a water body and the water quality criteria established to protect those uses, as well as antidegradation requirements. Where low flows in rivers, creeks and stream have impaired a beneficial use, the water quality standards have been violated, and the water body segment must be listed under Section 303(d).	See Responses to Comments 1.0, 1.1, 1.4, 6.5, and 6.18.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
6.21	Earth Law Center	Moreover, from a practical perspective, waiting the numerous years likely needed to adopt flow objectives would cause corresponding years worth of harm to affected waterways, harm that could be prevented with timely identification of flow impairments. The next integrated report cycle for the North Coast is 2018, and a flow objective may well not be adopted by that date. Both the Draft Staff Report and recent North Coast Board Triennial Review actions support this concern; these demonstrate that no one has committed to the development of a flow objective, despite the insistence that one is needed.	<p>See Response to Comment 3.0.</p> <p>Moreover, it is unclear how characterization of pollution related impairments would prevent harm to affected waterways.</p> <p>The North Coast Water Board can incorporate off-cycle decisions recommendations consistent with the recently amended Listing Policy. The Draft Staff Report outlines the many other actions the State Water Board is undertaking to address flow related issues and the commitment to participate in the upcoming flow related meetings. The March 11, 2015 workshop focused on regulatory approaches to address low flows with a particular focus on the development and implementation of flow objectives.</p>
6.22	Earth Law Center	Other states have avoided this logjam and moved forward with CWA-compliant, narrative flow objectives that allow them to readily identify flow-impaired waterways and take other protective actions under the CWA. However, California does not appear to be on this path. Considering the low likelihood of a North Coast flow objective being completed by any state entity	See Response to Comment 6.11.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		in the next several years, the State Water Board should act <i>now</i> to list clearly flow impaired waterways, including the Scott and Shasta Rivers.	
6.23	Earth Law Center	The Draft Staff Report calls for a “consistent methodology for addressing pollution [...] prior to including assessments of flow-related information” (p. 11). But as multiple letters from Coalition members to the North Coast Board and the State Water Board indicate, it is the CWA, its implementing regulations and U.S. EPA Guidance that constitute the overarching legal basis for state action – not a state-adopted methodology. If State Water Board staff insists on using an adopted methodology, the Listing Policy can serve this purpose. The Listing Policy states that where the “weight of evidence indicates non-attainment, the water segment shall be placed on the Section 303(d) list,” even when all other Listing Factors do not result in a listing. Coalition members including ELC staff participated extensively in the drafting of the Listing Policy through the AB 982 PAG, and can attest that the weight of evidence approach was developed for such purposes. As the provided and readily available data show, the “weight of evidence” for “shortlist” waterways	See Responses to Comments 1.0, 1.1 and 6.6. Section 1, subsection 3, of the Listing Policy states in express terms the intent for the application of the weight of evidence listing factor: “3. <u>Data Assessment</u> : An assessment in favor of or against a list action for a waterbody- pollutant combination shall be presented in fact sheets. The assessment shall identify and discuss relationships between all available lines of evidence for water bodies and pollutants . This assessment shall be made on a pollutant-by-pollutant (including toxicity) basis. (Emphasis added.)”

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		indicates impairments due to altered flow, and such waterways should be listed for flow impairments.	
6.24	Earth Law Center	<p>A statewide policy for identifying flow impairments for the 303(d) list and/or 305(b) Report, if developed by the State Water Board for close cases (<i>i.e.</i>, cases unlike the Scott and Shasta Rivers), must comply with the letter and intent of CWA Section 303(d) to serve as a backstop to protect waterways where pollution controls fail to protect beneficial uses.</p> <p>Particularly in light of the state's significant deviation from the federally mandated, biennial 303(d)/305(b) Report schedule, any decision making structure to identify flow-impaired waterways must err on the side of recognizing and listing threatened and impaired waterways, rather than erecting further roadblocks to restoring essential flows. Delays for the development of a "flows listing policy" would interfere with the need to immediately identify the most egregious cases of water bodies impaired due to altered flow, including the Scott and Shasta Rivers.</p>	<p>See Responses to Comments 1.0, 1.1, and 3.0.</p> <p>Water Board staff would like to determine the best regulatory approaches for addressing low flows and flow alterations. The Integrated Report process may or may not be the appropriate solution. The workshop on March 11, 2015 at the North Coast Water Board was intended to inform this determination.</p> <p>It is not the State Water Board's intention to create roadblocks to restoring the State's water quality but rather to scientifically and transparently protect, restore and enhance the State's water quality.</p>
6.25	Earth Law Center	Sufficient data are available on the Scott and Shasta Rivers for a flow-impairment listing.	See Responses to Comments 1.0, 1.4, 6.1, 6.3, 6.5, 6.7, and 6.16.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>After reviewing data on North Coast flow, State Water Board staff concluded that “a consistent source of high quality flow data across watersheds is lacking” (p. 11). This statement is incorrect. As North Coast staff pointed out in their Staff Report, there is sufficient data for at least the Scott and Shasta Rivers to make a finding of impairment due to altered flow. After suggesting a methodology with specific criteria that could be used to evaluate flow impairment, North Coast staff found that “[s]ubmitted information for the Scott River and Shasta River indicate that all criteria are met, if this methodology were to be used.”</p> <p>By contrast, the State Water Board’s Draft Staff Report fails to even acknowledge the North Coast staff’s suggested methodology and recognition of the strong flow impairment data available for the Scott and Shasta Rivers. No reason was given for the state’s rejection of this conclusion by the North Coast staff. The State Water Board further ignores information provided (as requested) by ELC on other states’ listing methodologies, which demonstrate a wide range of acceptable and straightforward processes for identifying flow-</p>	

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		impaired waterways.	
6.26	Earth Law Center	We ask that the Draft Staff Report be revised to at least recommend listing of the Scott and Shasta Rivers for flow, as identified in the North Coast Staff Report, and to also describe in detail the assessment procedure taken for “shortlist” waterways that were rejected for listing. If the State Water Board chooses to ignore the North Coast staff’s findings with regard to date for the Scott and Shasta, we ask that the reasons for that rejection be provided in detail, particularly in light of the extensive work to date by the public and North Coast staff regarding consideration of flow impairments in these waterways.	See Responses to Comments 1.0, 1.2, 1.4, 1.5, and 6.11. The State Water Board staff recommendations and findings are detailed in the current Draft Staff Report.
6.27	Earth Law Center	The draft staff report incorrectly concludes that waterways cannot be listed as flow impaired when already listed as impaired by a pollutant. U.S. EPA’s 2006 Guidance specifically demonstrates that states using a “multi-category” reporting framework can list a waterway in both categories 4c and 5. Based on their own interpretation of the EPA’s 2006 Guidance, State Water Board staff chose “not to place water in Category 4c for pollution when other impairments by pollutants	See Responses to Comments 1.0, 1.1, 1.2, 1.4 and 1.5. The statement contained in the Staff Report to which commenter refers does not make an incorrect conclusion or interpretation by applying U.S. EPA’s 2006 guidance. U.S. EPA’s 2006 Guidance states (at section V.G.3, pg. 56): “Segments should be placed in Category

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>are identified for the same water body segment” (p. 10).</p> <p>This is contrary to the interpretations by other states and U.S.EPA. Contrary to the Draft Staff Report’s interpretation, the plain meaning of this language is Category 4c is reserved for impairments caused by pollution rather than pollutants. It says nothing about the case in which impairments are caused by <i>both</i> pollutants and pollution, focusing only on the categorization of pollutants versus pollution under the Guidance system.</p>	<p>4c when the [S]tates demonstrate[] that the failure to meet an applicable water quality standard is not caused by a pollutant (emphasis added), but instead is caused by other types of pollution. Segments placed in Category 4c do not require the development of a TMDL.”</p>
6.28	Earth Law Center	<p>EPA’s 2006 Guidance does not state that waterways cannot be listed for both pollutant and pollution impairments. To the contrary, the EPA’s 2006 Guidance demonstrates that if a state uses a “multi-category” reporting framework (as the EPA’s 2006 Guidance suggests³⁰), then a waterway can be placed in both Category 4c and 5. The Guidance specifically demonstrates this point with “Segment J” in its “Segment Categorization Guide” (see Figure 1, below). If a state chooses to use a “single-category” approach (<i>i.e.</i>, where “Category 5 takes precedence over all</p>	<p>See Responses to Comments 1.0, 1.1, 1.2, 1.4 1.5, and 6.27</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		other categories”), then a water body that has both a Category 4c and 5 impairment can be classified under Category 5, while still recognizing the pollution impairment.	
6.29	Earth Law Center	<p>Flow is not effectively addressed through pollutant listings.</p> <p>After choosing not to list <i>any</i> waterways as impaired due to altered flow, the Draft Staff Report explains that the “[t]he current strategy relies on the TMDL process or other regulatory alternatives to identify causative factors and linkage analyses to control the pollution associated with pollutant impairments” (p. 10). The Draft Staff Report continues that the “lack of flow has been identified as a causal factor” in TMDLs developed to increase water temperature and sedimentation, such as in the Shasta River Watershed Temperature and Dissolved Oxygen TMDL action plan (p. 10). However, addressing flow through pollutant listings is not as effective as addressing flow through flow impairment listings, since only the latter properly and directly addresses the impairment.</p>	<p>See Response to Comments 1.0, 1.1, and 1.4.</p> <p>The Draft Staff Report describes the many other programs it utilizes to address low flows and flow alterations. The TMDL is one regulatory process where flow alterations are addressed and has been utilized in several areas including those initiated by U.S. EPA including the Ballona Creek Wetlands Sediment and Invasive Exotic Vegetation TMDLs and several Eel River TMDLs for Sediment and Temperature. The meeting on March 11, 2015 focused on identifying other regulatory mechanisms to address low flows.</p>
6.30	Earth Law Center	Existing waterways listed under category 5 should not be delisted.	See Response to Comment 3.4.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>The Draft Staff Report states that the four current listings for flow-related alterations (all in Region 4, which is not part of this listing cycle) “will likely be proposed for delisting as part of the next Listing Cycle” (p. 10). The reason cited is that the listings were made “prior to adoption of the Listing Policy and before guidance was developed on the method to inventory waters impaired by pollution, and not pollutants” (pp. 10-11). However, as described above, the Draft Staff Report’s reliance on the Listing Policy is misplaced, since the CWA and its implementing regulations provides the overarching legal and regulatory direction for state action, not the Listing Policy. The CWA calls for listings to reflect beneficial use impairments. State listing policies cannot be less stringent than the CWA. Delisting existing flow-impaired waterways simply based on the existence or not of state guidance is neither required by the CWA nor warranted by the data, which correctly justify the EPA-approved listings.</p>	<p>The State Water Board’s approval of the statewide CWA section 303(d) list must be in accordance with the CWA, it’s implementing regulations, and the Listing Policy. State Water Board staff’s recommendations concerning the segments commenters assert have flow impairments are in accordance with all three.</p>
6.31	Earth Law Center	<p>California should list for flow impairment in the 303(d) list rather than the 305(b) report. The Draft Staff Report assumes that the Coalition</p>	<p>See Responses to Comments 1.0, 1.1, 6.11, and 6.18.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>advocated for Category 4c flow listings under the 305(b) Report generally rather than on the 303(d) list. However, the Coalition previously requested that flow impaired waterways be included on the 303(d) list, highlighting as support the other states that take this approach and associated benefits. states such as Tennessee appropriately place waterways impaired by altered flow in one list, to be clear to the public and decision makers which waterways are “impaired” and which are not, and why. Tennessee lists all under their 303(d) list, being clear of course that only pollutants will receive TMDLs.</p>	
6.32	Earth Law Center	<p>Existing efforts to restore flow described in the draft staff report are inadequate to protect north coast rivers and streams. The flow programs in the draft staff report are insufficient to keep water in impaired water bodies and ensure additional water is put back in those water bodies. After rejecting flow impairment listings with little explanation the Draft Staff Report discusses in far more significant detail the state’s other efforts to protect flow, expressing that “it is important to acknowledge that the State and Regional Water Boards address flow through various other</p>	<p>See Responses to Comments 3.0 and 6.12. The State Water Board Policy for Maintaining Instream Flows in Northern California Coastal Stream (effective February 4, 2014), is directly applicable to the North Coast waters highlighted by the comments. The March 11, 2015 workshop in coordination with the North Coast Water Board focused on determining additional regulatory approaches for addressing low flows and flow alterations in the North Coast and statewide.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>programs” (<i>see</i> p. 11-13). The Coalition commends the State and North Coast Boards on these efforts. However, most of them address flow <i>outside</i> of the North Coast, proving of little near- or medium-term value to the waterways at issue. Moreover, there is no information that they will provide the short-term relief that flow listings could provide, as described extensively by the Coalition and other commenters in prior letters.</p>	
6.33	Earth Law Center	<p>With respect to the Draft Staff Report’s discussion of the public trust doctrine, the Coalition commends the State Water Board’s recognition of its responsibilities to protect flows under the doctrine. However, the legal landscape regarding the public trust doctrine is in flux. The California Supreme Court is currently considering whether to grant review of the recent ruling that protecting the public trust could require regulating withdrawals of interconnected groundwater. And acting alone, the State Water Board’s efforts to enforce the public trust doctrine have not been sufficient to protect flows in the vulnerable rivers of the North Coast. For example, some North Coast advocates report that they</p>	<p>Comment noted. See Response to Comment 3.1.</p> <p>Public trust complaints can be brought before the State Water Board anytime, independent of the California Integrated Report process. It is not clear that incorporating flow alterations into the Integrated Report would enhance the State Water Board’s functions related to the Public Trust Authority.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		received no substantive State Water Board response to public trust and other complaints concerning Scott River flows, which are so low that salmon either have no or delayed access to some spawning grounds even during normal precipitation years, while irrigators continue to over-divert and inadequately report on such diversions. Listing rivers for flow impairment could bolster the Board's public trust authority by reinforcing the need for responsive actions, including but not limited to curtailment letters.	
6.34	Earth Law Center	Another example referenced in the Draft Staff Report is the Policy for Maintaining Instream Flows in Northern California Coastal Streams (AB 2121 Policy). The Coalition appreciates key elements of the AB 2121 Policy, such as the establishment of regionally protective criteria that include a limited season of diversion, minimum bypass flow, and maximum cumulative diversion rate. However, the AB 2121 Policy has significant shortcomings. For example, the geographic scope of the AB 2121 Policy is limited, leaving out the entire Klamath River system. (Similarly, the Russian River Frost Protection regulations provide a useful	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		tool to address flow, but are geographically limited to the Russian River stream system.) Further, while development of site-specific criteria under the AB 2121 Policy could prove beneficial, implementation has been limited.	
6.35	Earth Law Center	The AB 2121 Policy fails to adequately address historic over diversion in the North Coast. Flow impairment listings would supplement the AB 2121 Policy by offering practical benefits to <i>all</i> applicable waterways – regardless of geographic location within the North Coast and other gaps associated with the AB 2121 Policy.	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.
6.36	Earth Law Center	Two final examples referenced in the Draft Staff Report are the State Water Board’s “prioritization report” mandated by Delta Reform Act of 2009 and the California Department of Fish and Wildlife’s instream flow studies under Public Resources Code sections 10000-10005. In both cases, while the data from the associated instream flow studies will be useful, there have been significant delays in completing these studies. Rather than postponing action while waiting for studies that take years to complete, we should take immediate steps, such as by making flow impairment listings, to protect the most severely	See Responses to Comments 1.0, 1.1, and 3.2. The site specific nature of flow makes it a difficult parameter to address. While site-specific studies are time consuming they are necessary to adequately characterize the specific flow needs for sustained aquatic life.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		dewatered rivers and streams.	
6.37	Earth Law Center	<p>There are many practical benefits of flow impairment listing that would help restore flow to impaired waterways.</p> <p>The Draft Staff Report also barely mentions in just one short sentence – the benefits of flow impairment listing. ELC and partners have repeatedly informed the State Water Board over the last several years of the many benefits of flow impairment listings, which go far beyond what the Draft Staff Report described. These are benefits already being enjoyed in other states around the country, including Western states. First, Section 303(d) listings for flow could provide support in local land use and planning decisions by requiring decision makers to consider flow impacts in development and redevelopment projects under CEQA and other local land use requirements, potentially mitigating the flow impacts of such projects.</p>	<p>See Responses to Comments 1.0, 1.4, 3.0, and 6.12.</p> <p>As provided in the U.S. EPA reference material noted in Response to Comment 1.0, the primary purpose of the 305(b) and 303(d) reporting requirements is to determine the extent waters are attaining standards, identify waters that are impaired and need to be added to the 303(d) list and placed in Category 5 for the development of a total maximum daily load (TMDL), and identify waters that can be removed from the list when standards are attained.</p> <p>While State Water Board staff acknowledges the potential benefit of better informed planning decisions, the suggested benefits can already be realized with the current section 303(d) listings.</p>
6.38	Earth Law Center	Second, flow listings can significantly increase the chances of receiving government (particularly bond) funds for flow restoration by highlighting those waterways most in need; they can also help	See Responses to Comments 1.0, 1.4, 3.0, 6.12 and 6.37.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		stakeholders meet public and private grant requirements for projects that can result in increased flow, some of which call for attention to impaired waters listings.	
6.39	Earth Law Center	Third, watershed-based organizations and local governments can use flow impairment listings to help guide their watershed management plans and prioritize activities in their watershed or jurisdiction	See Responses to Comments 1.0, 1.4, 3.0, 6.12 and 6.37.
6.40	Earth Law Center	Fourth, such listings would lower the burden of proof at State Water Board hearings related to water rights and flow, such as waste and unreasonable use hearings, ⁴¹ public trust doctrine applications, FERC relicensing's, dam removals, new water diversion applications, ⁴³ reopening of existing water rights permits, environmental review of water transfers, and other flow-related actions.	See Responses to Comments 1.0, 1.4, 3.0, 6.12 and 6.37.
6.41	Earth Law Center	Fifth, flow impairment listings can guide implementation of the new groundwater legislation by ensuring that new management plans and groundwater controls properly address the impacts of groundwater extraction on stream flows, which are widespread in the North Coast region.	See Responses to Comments 1.0, 1.4, 3.0, 6.12 and 6.37.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
6.42	Earth Law Center	Finally, 303(d) listings for flow would advance the development of a statewide database of waterways with reduced flows, which currently does not exist and is much needed to ensure that the state is properly identifying and prioritizing its efforts to address the health of the waters of the state. These practical benefits (discussed in more detail in the Coalition's May 15, 2013 comment letter and elsewhere) are the reasons that the Coalition and others have been working for almost the last five years to ensure that the most severely dewatered rivers and streams are identified as flow-impaired.	See Responses to Comments 1.0, 1.4, 3.0, 6.12 and 6.37.
7.0	General Public	Disagree with the do no delist decision for Indicator bacteria on the Russian River mainstem from Fife Creek to Dutch Bill Creek. The listing was based on fecal coliform and while 8 E. coli LOEs showed no exceedances. The single line of fecal coliform evidence provides no credible support for the recommendation since E. coli is the preferred indicator bacteria.	The State Water Board staff finds that the North Coast Water Board's staff recommendation is valid and consistent with the Listing Policy. The recommendation referred to by the commenter is identified as Decision Number 25533. The decision language states "29 of 103 fecal coliform samples from the mainstem Russian R. from Fife Ck. to Dutch Bill Ck. exceed the objective and this exceeds the allowable frequency from Table 4.2 of the Listing Policy." This assessment is consistent with the Listing Policy and warrants a Do Not Delist from the 303(d) list decision

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			recommendation.
8.0	North Coast Stream Flow Coalition	Failure of the State Board to list streams proposed by Earth Law Center and Coalition members which are obviously flow impaired is detrimental to public health, contrary to law and will delay actions to restore beneficial uses which rely on adequate stream flow. (note: Commenter refers to input and testimony submitted to Regional Boards and the State Board by the Earth Law Center to support this comment)	See Responses to Comments 1.0, 1.1, 1.2, 1.4, 1.5, 3.0, 3.1, and 6.1.
8.1	North Coast Stream Flow Coalition	There is new information on flow impairments for North Coast and Klamath River Basin streams prepared by Riverbend Sciences for National Marine Fisheries Service which was used in the recovery plan for Coho salmon. (note: a web link to this new information is provided in the comment letter)	<p>The current proposed 303(d) List portion of the 2012 California Integrated Report is based on data and information submitted by August 30, 2010.</p> <p>The new information should be submitted into CEDEN and will be evaluated in accordance with the procedures of the Listing Policy in future listing cycles.</p>
8.2	North Coast Stream Flow Coalition	The Shasta and Scott River Basins are identified by DWR as “medium” priority for groundwater extraction impacts which requires sustainable groundwater management plans and groundwater extraction regulation. These plans and regulations may, but are not required to, address the impacts	See Responses to Comments 1.0, 1.1, 1.5, 3.0, 6.5, and 6.12.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>of groundwater extraction on stream flows. A flow impaired listing would confirm groundwater extraction may be a factor in causing the flow impairment but because SWRCB didn't list the water body as flow impaired, that constitutes a finding that no impairment exists.</p> <p>In the Scott and Shasta River Basins cold water fisheries, including Coho and Chinook salmon and Steelhead trout, are flow dependent. So too in many, cases, are riparian and appropriative surface water rights. Therefore, the State Board's failure to list these streams as flow impaired may well frustrate, efforts to remediate flows that are inadequate to support Public Trust resources and surface water rights. In the worst case scenario, the State Board's failure to list the Shasta and Scott as flow-impaired could be used to justify new groundwater extraction to further damage flow-dependent beneficial uses of surface water.</p> <p>The State Board should not make the efforts of those who are working to protect and restore beneficial uses of surface water more difficult by failing to list as flow-impaired those watersheds in</p>	

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		which there is substantial and persuasive evidence that beneficial uses have been damaged or destroyed as a result of dewatering.	
8.3	North Coast Stream Flow Coalition	Similar situations obtained on significant portions of several other North Coast streams which have been proposed for listing as flow impaired including the Eel River, Mattole River, Napa River and Mark West Creek. Failure to list these streams as flow impaired will make it much more difficult for our member organizations to convince local and regional groundwater management entities that they should assess and address the impact of groundwater extraction on those beneficial uses dependent on adequate stream flows.	See Responses to Comments 1.0, 1.1, 1.5, 3.0, 6.5, 6.12, and 8.2.
8.4	North Coast Stream Flow Coalition	A decision by the State Board to list streams proposed for listing as flow impaired would assist those working to secure and restore stream flows. We would not, for example, have to work to convince groundwater management entities that a stream is flow impaired, we could rely on the State Board's listing. Similarly a state board listing will assist our members in preventing new developments which would further dewater our streams and rivers or in securing modifications of	See Responses to Comments 1.0, 1.1, 1.5, 3.0, 6.5, and 6.12.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		those new developments to reduce impacts to stream flow.	
8.5	North Coast Stream Flow Coalition	A watershed's inclusion on the 303d impaired waterbodies list would mean that CEQA reviews for new and expanding developments with potential to negatively impact streamflows in a flow-impaired watershed would be required to analyze and disclose potential impacts to stream flows. If there would likely be impacts, new and expanding developments would be required to explore options to avoid those impacts. In this manner, some part of the regulatory responsibility for preventing damage to beneficial uses of surface water is shifted from the SWRCB and regional boards to the planning entities responsible for environmental review of new or expanding developments.	See Responses to Comments 1.0, 1.1, 1.5, 3.0, 6.5, and 6.12.
8.6	North Coast Stream Flow Coalition	The State Board should not make the efforts of those who are working to protect and restore beneficial uses of surface water more difficult by failing to list as flow-impaired those watersheds in which there is substantial and persuasive evidence that beneficial uses have been damaged or destroyed as a result of dewatering. Rather the Board should consider those doing this work as	See Responses to Comments 1.0, 1.1, 1.5, 3.0, 6.5, and 8.2.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		partners. Please give us the flow impaired listings which are supported by substantial evidence.	
8.7	North Coast Stream Flow Coalition	The Water Boards should be resolved to appropriately list waterbodies as flow impaired to afford all resources the State can muster to restore stream flows since it is in the best interest of the State to have healthy stream flows.	See Response to Comments 1.0, 1.1, and 3.0.
8.8	North Coast Stream Flow Coalition	The Coalition disagrees with the Re-segmentation and subsequent failure to list the Upper and Lower Scott River as impaired by aluminum and bio stimulatory substances. Re-segmentation was based on one comment letter and allowed State board to only list the new middle segment of the Scott River as impaired.	<p>The State Water Board staff finds that the North Coast Water Board's staff recommendation to re-segment the Scott River is valid and consistent with the Listing Policy. The Listing Policy allows for streams to be segmented according to similar hydrology and land use (Section 6.1.5). The North Coast Water Board's Staff Report outlines the rational for the re-segmentation and State Water Board staff concurs that the re-segmentation and associated delisting of the Upper and Lower Scott River for aluminum impairment is appropriate.</p> <p>Additionally, North Coast Water Board staff has been encouraged by State Water Board and USEPA staff to re-segment the North Coast Regional Basin's water bodies in an effort to more accurately reflect the true extent of impairment as</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			reflected by the data. The Basins of the other Regional Water Boards in the state generally contain more discretely defined water bodies consisting of streams and/or stream-segments.
8.9	North Coast Stream Flow Coalition	The new segmentation ignores stream habitat types. The upper segment of the alluvial Scott Valley is dominated by agriculture, the middle segment is agricultural and forested river canyon and the lower section is forested canyon.	See Response to Comment 8.8.
8.10	North Coast Stream Flow Coalition	The decision to re-segment makes it more difficult to obtain a listing or a delisting because more samples will have to be obtained for a smaller section of stream.	See Response to Comment 8.8. The Listing Policy application of the number of samples required to list and delist has not changed. It is only appropriate to list the area where data reflect impairment. This allows for a better determination of sources after impairment is identified. Furthermore, if a TMDL source analysis determines other segments are also impaired by the pollutant, they will be appropriately included on the 303(d) List.
8.11	North Coast Stream Flow Coalition	The decision to re-segment was made without public input or tribal consultation and imposes costs on the Quartz Valley Indian Reservation. It is an environmental injustice which the State Board should reject. Difficulties in achieving	See Response to Comment 8.8. The North Coast Regional Water Board provided fair and meaningful involvement for all interested persons regarding its consideration of its proposed

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		listings causes disadvantaged communities to suffer harm when water bodies of their lands are polluted and depleted due to lack of flow.	<p>2012 Integrated Report for waters within its region. In accordance with the Listing Policy (at sections 6.1.1 and 6.1.2) the Regional Water Board actively solicited and considered data and information from all sources and any interested person. Pursuant to the Listing Policy (at section 6.2), the Regional Water Board reached its decision at the conclusion of a public hearing, upon consideration of all evidence and testimony of all interested persons, which occurred after advance notice to the public was given and an opportunity for the public to comment on its draft Staff Report for its Integrated Report, and subsequent to holding a public workshop.</p> <p>The Quartz Valley Indian Reservation, which also has submitted a comment letter addressing the segmentation of the Scott River, is on the lyris list for all notices and announcements concerning the North Coast Regional Water Board's development and adoption of the 2012 Integrated Report. North Coast Regional Water Board staff reports that representatives of the Quartz Valley Tribe were present at its public workshops and/or adoption hearing. Additionally, the North Coast</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>Regional Water Board's staff report (Section 3.6.5, pp.28-29) explains:</p> <p>“3.6.5 Assessment of Data From Streams and Stream Segments Within Native American Reservations: The Regional and State Water Boards do not have the authority to list or delist water bodies within the boundaries of Native American Reservations, as only the federal government through the USEPA has jurisdiction to list and delist water bodies on Tribal land. However, the Regional Water Board’s Basin Plan applies to streams and stream segments within Native American Reservations when the Tribe does not have a USEPA approved Basin Plan of their own. Only the Hoopa Valley Tribe has a USEPA-approved Basin Plan in the North Coast Region.”</p> <p>State Water Board staff created lines of evidence for data collected both within and outside Native American Reservation boundaries. The objectives</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			<p>from the Regional Water Board's Basin Plan were applied to all data, except those data collected in water bodies on the Hoopa Valley Tribe Reservation, where the objectives from the Hoopa's Basin Plan were utilized.</p> <p>All lines of evidence were associated with decisions for those water bodies, although the lines of evidence containing data collected on Tribal land were not utilized by Regional Water Board staff to make a final listing or delisting determination. Instead, staff summarized the data from Tribal land and made a recommendation to U.S. EPA to either list or delist the stream(s) or streams segment(s) where the data were collected on Tribal Land.</p>
8.12	North Coast Stream Flow Coalition	The segmentation of the Scott River opens the door to further arbitrary re-segmentation of water bodies, making it appear that fewer miles of stream are impaired or that progress towards removing impairments has been made when it hasn't.	See Responses to Comments 8.8 and 8.11.
8.13	North Coast Stream Flow Coalition	The Coalition asks the State Board to develop and adopt guidance for when and how a regional board can re-segment a single water body. The	See Response to Comment 8.8.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Coalition believes that decisions to re-segment should be made as Basin Plan amendments to insure public participation and utilize the best available science.	
8.14	North Coast Stream Flow Coalition	A decision by the State Board to list streams as flow impaired would provide Coalition members and other citizens with an effective tool to forestall further dewatering of streams.	See Responses to Comments 1.0, 3.0, and 6.12.
9.0	Planetary Solutionaries	The comment submitted is a website maintained by the commenter regarding the overall failure of California's water quality regulatory programs.	This comment does not appear to pertain to the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.
9.1	Planetary Solutionaries	The commenter references the State's map of impaired waters and comments that there has been a "170% increase in toxicity listings from 2006 to 2010. All assessed waters in the 2010 Report are a compilation of the latest approved data. The data indicate an increase in toxicity and listing of water impaired bodies will continue to rise. Unfortunately, the public may not know just how bad things are statewide until 2017 or beyond, as government regulators failed to provide an updated assessment listing the status of the State's waters. Even then, critics point out that water quality monitoring, and the related data, are conducted almost extensively by the polluters".	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
9.2	Planetary Solutionaries	This document recommends the basic elements of a State water monitoring program and serves as a tool to help EPA and the States to determine whether a monitoring program meets the prerequisites of CWA Section 105(e)(1).	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.
9.3	Planetary Solutionaries	Navigating the State Water Boards' websites to ascertain the total number of impaired water bodies was difficult, even with the assistance of Board personnel.	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report. However, the State Water Board is currently exploring the creation of a more user-friendly website interface relating to water quality programs. In the meantime, staff contacts have been provided on the existing website to direct visitors to a knowledgeable staff person to aid in accessing public information.
9.4	Planetary Solutionaries	State Water Board Did Not Adopt CWA Section 303(D) List Until 2004	This comment is beyond the scope of the State Water Board's consideration of the 303(d) List portion of the 2012 California Integrated Report. However, the State Water Board has submitted a 303(d) List to EPA since 1976. The State Water Board developed and adopted the Listing Policy in 2004.
9.5	Planetary Solutionaries	The Performance report indicate that California officials have a lack-luster track-record in productivity for its expenditure of CWA and SDWA funds, failure to provide required updated	This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report. However, the State Water Board recently approved on February 5,

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		303(d), and the vast amounts of water bodies yet to be assessed is indicative of a system in need of innovative progress, oversight and regulatory reform.	2015, amendments to the Listing Policy designed to allow for a more efficiently produced and more timely submitted, 303(d) List and 305(b) Report.
10.0	Quartz Valley Indian Reservation	Proposed De-Listing of Klamath National Forest (KNF) Reference Streams for Temperature and Sediment. The Staff Report concurs with the NCRWQCB's recommendation to de-list streams within KNF for sediment and temperature that KNF has identified as "reference streams." We agree that it is appropriate that reference streams include natural disturbances; however, we strongly disagree with the assumption that the large high-severity fires that have burned in recent decades in riparian zones on KNF lands are "natural". While it is natural for fires to burn with a mosaic of severity which would include patches of stand-replacing crown fires, a century of fire suppression has dramatically altered forest stand structure and fuel continuity. As a result, when fires now occur and escape containment, the percent area burned with high severity has likely increased, causing deleterious effects on aquatic ecosystems such as increased sediment, reduced stream shade, and increased water temperature.	<p>This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report. Determination of reference streams is outside the scope of the Integrated Report process.</p> <p>State Water Board staff concurs with the North Coast Water Board's staff determination that an updated guidance developed by the U.S. Forest Service is consistent with SWAMP protocols and is the most appropriate evaluation guideline to interpret the Basin Plan's narrative water quality objective for Suspended and Settleable Material. State Water Board staff also concurs with the North Coast Water Board staff's analysis of temperature based reference streams and the recommended delistings associated with those delistings.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
10.1	Quartz Valley Indian Reservation	Prior to fire suppression, the size of individual fires was limited by features such as streams, riparian zones, and ridgetops which stopped fires from spreading long distances (Taylor and Skinner 2003) (figure1). Mean fire size has increased dramatically in northwestern California since the fire suppression began in the early 20th century (Miller et al. 2012).	See Response to Comment 10.0. This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.
10.2	Quartz Valley Indian Reservation	Commenter recommends that reference sites be revisited to explicitly identify streams where riparian zones have been impacted by high-severity fire, and that those impacted streams not be delisted for temperature and sediment.	See Response to Comment 10.0. The reference streams will continue to be monitored and examined for impairments consistent with the Listing Policy and future Listing Cycle.
10.3	Quartz Valley Indian Reservation	We are disappointed with the decision to not list the Scott River as impaired for lack of flow, which had been requested by QVIR as well as a coalition of 26 other conservation and fishing advocacy groups. Lack of a flow impairment may affect other processes, such as the implementation of recent Statewide groundwater legislation and applications for new appropriative water rights.	See Responses to Comments 1.0, 1.4, 3.0, and 6.12.
10.4	Quartz Valley Indian Reservation	Commenter supports the listing of a portion of the mainstem Scott River for high pH, low DO, and bio stimulatory conditions as well as the proposed listing of Shackleford Creek above Campbell	Comment noted. See Responses to Comments 8.8 and 8.10.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>Lake for low pH. However the commenter is concerned with the NCRWQCB's segmentation of the Scott River. The segmenting of the river seems to be driven by the availability of data. Other segments may be impaired but there is no data available showing this in part because of a lack of landowner cooperation in these segments. Segmenting a water body to not list poorly sampled segments acts as a reward to landowners who don't allow monitoring. If allowed to stand, the NRWQCB's decision would set an unfortunate precedent. The commenter requests that the SWRCB reverse the NRWQCB's decision and list the entire Scott River for aluminum, DO, biostimulatory conditions, and pH.</p>	
11.0	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	<p>The Permittees request this comment letter be added to the record for the 303(d) list portion of the 2012 California Integrated Report. The permittees provide lines of evidence herein which more specifically characterize flow in the Coachella Valley Stormwater Channel (CVSC) and identify that MS4 discharges are not a source for the new listings toxicity and total ammonia.</p>	<p>Comment noted. To clarify, Water Board staff does not accept lines of evidence. Rather, staff examines the readily and available data submitted consistent with the Listing Policy and Notice of Solicitation and creates the lines of evidence based on that data and information.</p> <p>The proposed 303(d) List portion of the 2012 California Integrated Report was developed based all readily available data and information that was</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
			submitted as part of the notice of solicitation, which had a deadline of August 30, 2010 and data and information submitted subsequent to that deadline is not evaluated during this listing cycle.
11.1	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	The Permittees request that the State modify the assessment methodology for the proposed toxicity listing in the CVSC to be consistent with the State's 303(d) Listing Policy.	<p>This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.</p> <p>The Listing Policy and its assessment methodology is not being proposed for amendment at this time.</p>
11.2	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	The Permittees wish to ensure that a 303(d) listing, not caused by MS4 discharges, does not trigger unnecessary actions by the Permittees under the current or future MS4 Permit.	<p>This comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.</p> <p>The source determination and regulatory actions associated with 303(d) Listings are actions taken after an impairment is identified and is not part of the Integrated Report process. TMDL and permitting staff will determine the sources and appropriate regulatory actions to ensure the impairment is properly addressed.</p>
11.3	Riverside County Flood Control and Water Conservation	Page 14 of the draft staff report states that potential sources for listings will only be identified by the Water Boards, "when a specific	State Water Board staff interprets the provisions of Section 6.1.2.2 subpart K of the Listing Policy regarding potential sources of pollutants to mean

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
	District on behalf of the MS4 Permittees in the Whitewater River Region	source analysis has been performed as part of a TMDL or other regulatory process." The Permittees are unclear on why a specific source analysis would need to be conducted if readily available data exists now, during the listing process, which can assist with more accurate characterization of potential sources for the proposed listing. Additionally, Section 6.1.2.2 of the State's 303(d) Listing Policy requires regional Boards to identify potential pollutant sources "as specifically as possible" when creating the waterbody fact sheets used to describe the basis for proposed listings.	sources that have been clearly identified as part of a specific sources analysis as part of a TMDL or other regulatory process. This approach and allows for a transparent and consistent source characterization for impairments.
11.4	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Dry weather MS4 discharges are not a source of flow in the CVSC, and therefore, are not contributing to impairment. There are several lines of evidence which demonstrate that dry weather MS4 discharges are not a source of flow in the CVSC.	See Response to Comment 11.2.
11.5	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees	First line of evidence which demonstrates dry weather MS4 discharges are not a source of flow in the Coachella Valley Stormwater Channel (CVSC). The CVSC is the only perennially flowing receiving water in the Whitewater River	Comment noted. See Response to Comment 11.2. If it has been determined that the Whitewater River MS4 permittees are not contributing to dry weather flows as part of an established and

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
	in the Whitewater River Region	MS4 permit area; however, as noted in the current Whitewater River Region MS4 Permit, MS4 discharges do not constitute a significant source of the flows (emphasis added.): "The CVSC is the 25 mile long, constructed downstream extension of the Whitewater River channel, beginning west of Washington Street in La Quinta and ending on the north shore of the Salton Sea. The lower 17-mile reach of the CVSC is the only surface waterbody in the Whitewater River Region that features perennial flow; <i>these flows are dominated by effluent from the NPDES permitted POTW discharges, rising groundwater, and agricultural return flows.</i> "	<p>approved regulatory program, then it is unlikely the MS4 permittees will be associated with any applicable dry weather regulatory actions resulting for the Coachella Valley Stormwater Channel.</p> <p>The fact sheets do not have a section where non-potential sources can be identified.</p>
11.6	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Second line of evidence which demonstrates dry weather MS4 discharges are not a source of flow in the Coachella Valley Stormwater Channel (CVSC). Regional soil type. Whitewater River Region soil types limit the ability for dry weather MS4 flows to reach the CVSC, as noted in the current MS4 Permit (emphasis added): "The predominant soil types within the Whitewater River Region are classified as Carsitas and Myoma. <i>These sands are extremely pervious and promote rapid infiltration of runoff.</i> " "Due to the	See Responses to Comments 11.2 and 11.5.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		small percentage of the Whitewater River Watershed and the Whitewater River Region in urban land uses, Permittee requirements for New Developments to retain Urban Runoff, and natural soil conditions, <i>Urban Runoff constitutes a minor percentage of the total flow</i> in the Whitewater River during storm conditions. During non-storm conditions, Urban Runoff discharges to Receiving Waters in the Whitewater River Region are also relatively minor based on flow volume."	
11.7	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Third line of evidence which demonstrates dry weather MS4 discharges are not a source of flow in the Coachella Valley Stormwater Channel (CVSC). Diversion of all MS4 outfalls to CVSC to drywells. There are only three MS4 outfalls which outlet to the proposed listed reach of the CVSC. As of 2011, all three of these outfalls have been diverted to dry wells, thereby ensuring that no discharges occur from the City of Coachella's MS4 to the CVSC during dry weather. During a site walk with City of Coachella staff on March 14, 2013, Region 7 staff confirmed the presence and functionality of dry well diversions. The current MS4 permit features language which reflects implementation of these BMPs: "The	See Responses to Comments 11.2 and 11.5.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		City of Coachella has proactively implemented structural Best Management practices (MPs) to effectively infiltrate all Dry Weather Urban Runoff prior to reaching MS4 Outfalls regulated by the CVSC Bacterial Indicators TMDL. These structural BMPs were completed in 2011 with additional modifications planned to improve the effectiveness of the Avenue 52 outfall controls. These BMPs ensure that there are no discharges from the City's MS4 during Dry Weather."	
11.8	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Additionally, as required by Phase 1 of the Bacterial Indicator TMDL at CVSC, the City of Coachella submitted and received Region 7 approval for its Quality Assurance Project Plan (QAPP) in May of 2013. One of the objectives of the City's QAPP is to conduct monthly monitoring to assess whether flows from the City's three MS4 outfalls have surface connectivity with flows in the CVSC. In accordance with Phase 1 implementation of the TMDL, this monitoring data is submitted to Region 7 staff on a quarterly basis, and it provides evidence that as of May 2013, discharges from MS4 outfalls to the CVSC have not occurred. The Permittees request that State Board staff review this data, as it can	See Responses to Comments 11.2 and 11.5.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		provide additional valuable insight regarding the MS4 contribution to flows in the CVSC.	
11.9	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Wet Weather MS4 discharges did not cause the exceedences on which the proposed 303(d) listings are based. The basis for the proposed listings is data collected through the Surface Water Ambient Monitoring Program (SWAMP) on the following dates: October 26, 2005; May 2, 2006; May 8, 2007; October 22, 2007; April 22, 2008; and October 29, 2008. According to rainfall records for these years (see Attachment A, Table A-5 – Table A-10), no wet weather discharges occurred on the day of, or 72 hours prior to these sample dates. Therefore, MS4 wet weather discharges did not cause the exceedences on which the proposed listings are based.	See Responses to Comments 11.2 and 11.5.
11.10	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	Modify the assessment for the toxicity and total ammonia listings to be consistent with the State's 303(d) listing policy. The supporting documentation for the proposed toxicity listing in the CVSC identifies two of seven samples as exceeding the objective; these two exceedences were collected in 2005 and 2006. Since that time, all dry weather MS4 discharges have been diverted (see comment #1); existence of these	See Response to Comment 11.0. If the environment has changed as a result of an approved BMP program then previous data may be disregarded in future assessments consistent with Section 6.1.5.3 of the Listing Policy. The collaboration the commenter has had with Colorado River Water Board Staff will result in these listings being prioritized for reassessment

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		diversions has been verified by Region 7 staff. Section 6.1.5.3 of the State's 303(d) Listing Policy specifically states: "If the implementation of a management practice(s) has resulted in a change in the water body segment, only recently collected data [since the implementation of the management measure(s)] should be considered."	and potential delistings during future listing cycles. In the meantime, State Water Board staff encourages the commenters to submit monitoring data to CEDEN.
11.11	Riverside County Flood Control and Water Conservation District on behalf of the MS4 Permittees in the Whitewater River Region	The Permittees request that (1) the lines of evidence provided herein be placed on the record for the 303(d) list portion of the 2012 California Integrated Report; these lines of evidence more specifically characterize flows in the CVSC, and identify that MS4 discharges are not a source for the proposed new listings for toxicity and total ammonia, and (2) the assessment for the toxicity and total ammonia listings be revised, consistent with the State's 303(d) Listing Policy.	See Responses to Comments 11.0 and 11.10.
12.0	Santa Barbara Channelkeeper	Reaches 3 and 4 of the Ventura River may not be delisted from the 303(d) list as impaired for flow by pumping and diversion. The existing listings for Reaches 3 and 4 of the Ventura River accurately reflect the current diminished flows and resulting impairments to designated beneficial uses in those Reaches. There are two major dams which affect surface flows in reaches 3 and 4,	See Responses to Comments 1.0, 1.1, 3.0, 3.4, 6.11, and 6.30.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Matilija and Casitas. More recently, studies and reports continue to acknowledge the strong connection between groundwater pumping and diversions and the resulting loss of flows in the River. Reduced Surface Flows Impair the Beneficial Uses of Reaches 3 and 4, Including Endangered Species Habitat. When flows decrease below the threshold, the steelhead habitat suitability declines significantly. (note: a draft line of evidence to support this comment has been submitted with the comment letter).	
12.1	Santa Barbara Channelkeeper	There are two major dams which affect surface flows in reaches 3 and 4, Matilija and Casitas. Two major river diversions are located within these reaches, Robles Diversion Facility and the Foster Park Subsurface Diversion. The City of Ventura operates the Foster Park Subsurface Diversion (“Foster Park”). Three major municipal well fields are located in Reaches 3 and 4. These are operated by Meiners Oaks Water District, the Ventura River Water District, and the City of Ventura. Groundwater from these reaches is also pumped for agricultural and domestic purposes. <i>See</i> U.S. EPA Draft Ventura River Reaches 3 and 4 Total Maximum Daily Loads For Pumping &	See Responses to Comments 1.0, 3.0, 1.1, 3.4, 6.11, and 6.30. U.S. EPA abandoned the effort related to the TMDL referenced by the commenter because a TMDL cannot be written for pollution. Instead U.S. EPA found that the appropriate avenue for addressing the flow alterations was to identify them as a causative factor in the Ventura River Algae TMDL.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Water Diversion- Related Water Quality Impairments (“EPA Draft TMDL”).	
12.2	Santa Barbara Channelkeeper	<p>In 1998, the U.S. EPA approved California’s list of impaired water bodies identified pursuant to Clean Water Act section 303(d) (33 U.S.C. § 1313(d)), which first listed Reaches 3 and 4 as impaired for pumping and diversion. According to Los Angeles Regional Water Quality Control Board (“Regional Board”) staff, the original listing referenced a 1996 Steelhead Restoration and Management Plan for California (“Steelhead Restoration Plan”) as one basis for the listing decision. The plan states, “The major obstacle to steelhead restoration in this system is blocked access to headwaters and excessive water diversion.” Steelhead Restoration Plan, p. 201. The plan describes several large-scale water diversions in the river including Foster Park and the City of Ventura’s wells in the lower River, which, “ha[ve] resulted in dewatering portions of the lower river during summer and fall.” Steelhead Restoration Plan, p. 203.</p> <p>Most recently, on August 4, 2010, the State Water Resources Control Board (“State Water Board”)</p>	<p>See Responses to Comments 1.0, 1.1, 3.0, 3.4, 6.11, and 6.30.</p> <p>Prior approval of these listings being carried over since 1998 does not preclude the Water Boards from recommending removal based on the state’s Listing Policy and U.S. EPA guidance.</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		<p>approved California's 2010 303(d) list. Channelkeeper notes that the supporting fact sheets for these listings state that both the Regional Board and State Water Board staff reviewed the existing Ventura River watershed listings for pumping, water diversions, and fish barriers and decided to make no modifications to the list. On October 11, 2011, the U.S. EPA approved the State Water Board's triennial review and update to the 303(d) list, which maintained the pumping and diversion impairments for Reaches 3 and 4 of the Ventura River.</p>	
12.3	Santa Barbara Channelkeeper	<p>The commenter presents several recent studies the provide data and information related to the groundwater to surface water interaction. They also provide hydrology studies that recommend various flow thresholds for Foster park reach of the Ventura River necessary to support aquatic life beneficial uses.</p> <p>Commenter has included temperature and Dissolved Oxygen data showing exceedances of the Basin Plan Objectives for these parameters stating that the exceedances shown in this data are related to low flow conditions which further</p>	<p>See Responses to Comments 1.0, 1.1, 3.0, 3.4, 6.11, 6.30, 11.10, and 12.3.</p> <p>The data and information presented for waters in Region 4 (Los Angeles) is beyond the scope of the 303(d) List portion of the 2012 California Integrated Report, which assessed information submitted for Regions 1 (North Coast), 6 (Lahontan) and 7 (Colorado River).</p> <p>The proposed 303(d) List portion of the 2012 California Integrated Report was developed based all readily available data and information that was</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		supports their comment that flow impairment listings should be maintained.	<p>submitted as part of the notice of solicitation, which had a deadline of August 30, 2010.</p> <p>In the meantime, State Water Board staff encourages the commenters to submit data and information to CEDEN so it is available for future assessment.</p>
12.4	Santa Barbara Channelkeeper	The Clean Water Act and U.S. EPA Guidance Provide for Flow-Impairment Listings. Under the Clean Water Act, when effluent limitations are insufficient to ensure compliance with water quality objectives and a water body can no longer be put to its designated beneficial uses (collectively “water quality standards”), that water body’s water quality standards have not been attained and its beneficial uses are impaired. The State must identify that water body on the list of impaired waters. 33 U.S.C. § 1313(d)(1). An impairment listing is required whether the impairment is caused by “pollutants” or “pollution.” See 33 U.S.C. § 1313(d)(1)(A); see also <i>Pronsolino v. Nastri</i> , 291 F.3d 1123, 1137-38 (9th Cir. 2002), cert. denied, 123 S. Ct. 2573	See Responses to Comments 1.0, 1.1, 6.11, and 6.18.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		(2003) (“Water quality standards reflect a state’s designated uses for a water body and do not depend in any way upon the source of pollution”). In describing categories of impairment listings, EPA specifically uses “lack of adequate flow” as an example of a cause an impairment to a water segment.	
12.5	Santa Barbara Channelkeeper	As discussed in Section II.A. above, the Clean Water Act requires that the State Water Board include all impaired water segments on the 303(d) list. The requirement to identify impaired waters on the 303(d) list is not conditioned on the existence of a formal listing policy. As with the Listing Policy, formal guidance from U.S. EPA is not a prerequisite to impairment listings and listings issued and approved predating the 2006 Guidance are entirely valid.	See Responses to Comments 1.0, 1.1, 6.11, and 6.18.
12.6	Santa Barbara Channelkeeper	Consistent with the language and the purpose of Clean Water Act section 303(d), the U.S. EPA has found that “pollution” must result in a 303(d) listing if it results in impairment. See U.S. EPA, “Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act,” p. 56 (“2006 Guidance”). In describing	See Responses to Comments 1.0, 1.1, 6.11, and 6.18.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		categories of impairment listings, EPA specifically uses “lack of adequate flow” as an example of a cause an impairment to a water segment. Accordingly, a water body that cannot support its designated beneficial uses due to altered flow must be included on the State Water Board’s 303(d) list as impaired. Altered flows in Reaches 3 and 4 of the Ventura River caused by pumping and diversions impair those Reaches’ beneficial uses. Thus, as provided by the Clean Water Act, in 1998 the State Water Board included Reaches 3 and 4 on the 303(d) list as impaired by pumping and diversion. Not only are these listings valid under the Clean Water Act, they are in line with relevant U.S. EPA Guidance.	
12.7	Santa Barbara Channelkeeper	Section 3.9 of the Listing Policy states that “[a] water segment shall be placed on the section 303(d) list if the water segment exhibits significant degradation in biological populations and/or communities as compared to reference site(s) and is associated with water or sediment concentrations of pollutants including but not limited to chemical concentrations, temperature, dissolved oxygen, and trash.” Listing Policy, p. 7.	<p>See Response to Comment 12.3 explaining that such comment is beyond the scope of the proposed 303(d) List portion of the 2012 California Integrated Report.</p> <p>State Water Board agrees that Reaches 3 and 4 of the Ventura River may meet other listing factors related to pollutant impairments consistent with</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Given the biological populations and communities of steelhead in Reaches 3 and 4 of the Ventura River, this listing factor is met. Specifically, the Ventura River watershed is home to at least 11 endangered or threatened species, including steelhead trout. See U.S. Fish & Wildlife Service, Listing and Occurrence for California. ² Reaches 3 and 4 of the Ventura River are occupied by steelhead and are rated as having high conservation value. (supporting documentation included in the comment letter).	Sections 3.2, 3.9 and 3.11 of the Listing Policy.
12.8	Santa Barbara Channelkeeper	The situation-specific weight of evidence listing factor provides that when information indicates non-attainment of applicable water quality standards that water segment is to be evaluated to determine whether the situation-specific weight of the evidence demonstrates that the water quality standard is not attained. Reaches 3 and 4 each meet the situation-specific weight of evidence listing factor. Current conditions show that Reaches 3 and 4 are impaired for flow, and that the impairment is caused by pumping and diversions. (see comment letter and attachments for proposed justification details). The available information and data supporting impairment	<p>See Responses to Comments 1.0, 1.1, and 6.11.</p> <p>Water Board staff agrees that the situation-specific weight of evidence approach could be used to determine impairments by pollutants. However, State Water Board staff disagrees that the Listing Policy applies to pollution. Section 1, subsection 3, of the Listing Policy states in express terms the intent for the application of the weight of evidence listing factor:</p> <p>3. Data Assessment: An assessment in favor of or against a list action for a waterbody-pollutant combination shall be presented in fact sheets. The assessment shall identify</p>

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		listing is scientifically defensible and reproducible. Further, in approving the State Water Board's TMDL for the Ventura River, U.S. EPA recognized need for further action to address flow impairment.	and discuss relationships between all available lines of evidence for water bodies and pollutants . This assessment shall be made on a pollutant-by-pollutant (including toxicity) basis. (Emphasis added.)
12.9	Santa Barbara Channelkeeper	If the Listing Policy applies, then it applies equally for listing and delisting. See Listing Policy, Section 4, pp. 11-13. In addition to satisfying the delisting factors, which it cannot, to remove Reaches 3 and 4 from the 303(d) list the responsible Regional Water Quality Control Board (here Region 4) must document the list change in a fact sheet and hold a public hearing to approve the change, respond in writing to all public comments, approve a resolution in support of the decision, and submit supporting fact sheets, responses to comments, documentation of the hearing process, and a copy of all data and information considered to the State Water Board. The State Water Board must also assemble supporting fact sheets and provide advance notice and opportunity for public comment on the listing decision. See Listing Policy, Section 6.3, p. 26. The 2012 Integrated Report makes no reference to the delisting factor, and Channelkeeper is unaware	See Responses to Comments 3.4 and 12.8. State Water Board staff disagrees that the Listing Policy, specifically its listing and delisting factors, applies to pollution—yet changes to the 303(d) List would afford the public participation processes as outlined therein. The original listings were made prior to the development of the Listing Policy. The waters should be re-evaluated using the current Policy and determine if the listings are appropriate. Region 4 waters are not being recommended for change for this Listing Cycle.

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		of any efforts by Region 4 or the State Water Board to comply with these delisting requirements. Accordingly, unless the delisting factors and additional requirements are met, Reaches 3 and 4 must remain listed as flow-impaired due to pumping and diversions. Because the existing pumping and diversion impairment listings for Reaches 3 and 4 are entirely consistent with the Clean Water Act, U.S. EPA Guidance, and the State Water Board's Listing Policy, that the impairments were identified on California's 303(d) list before the State Water Board adopted the Listing Policy or U.S. EPA adopted the 2006 Guidance in no way invalidates those listings.	
12.10	Santa Barbara Channelkeeper	Removing the impairment listings for Reaches 3 and 4 as the State Water Board says it will likely propose may impede existing and future efforts to remedy the ongoing flow-impairments of Reaches 3 and 4. Thus Channelkeeper strongly urges the State Water Board to comply with its Clean Water Act duty to continue to identify Reaches 3 and 4 on the 303(d) list as flow-impaired by pumping and diversions.	See Response to Comment 3.4. State Water Board staff is not recommending changes be made to any Region 4 waters for this Listing Cycle.
13.0	United States Environmental	We recommend all the water body-pollutant-combinations proposed for Category 4b by	Comment noted. State Water Board staff will revise the draft staff report and the proposed

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
	Protection Agency, Region IX	Regional Board 7 be placed into Category 5 list. After reviewing the data and the justifications for 4b, we find the justifications do not adequately describe how the pollution controls identified will achieve water quality standards. We acknowledge that the programs that they have in place may partially address the impairments and would not object to these having a lower priority for TMDL development.	303(d) List portion of the 2012 California Integrated Report accordingly.
13.1	United States Environmental Protection Agency, Region IX	The State Board should change the Regional Board 6 categorization for Carson River East Fork for the elements boron, phosphorus, and sulfate from 4b to 5. While the Regional Board has issued a Waste Discharger Requirement requiring BMPs to control these pollutants, the controls are insufficient to meet water quality standards in the Basin Plan high influent concentrations associated with Grover Hot Springs. The State Board could address this program by implementing a natural source exclusion in the Inland Surface Waters, Bays and Estuaries Policy.	Comment noted. State Water Board staff will revise the draft staff report and the proposed 303(d) List portion of the 2012 California Integrated Report accordingly.
13.2	United States Environmental Protection Agency, Region IX	Topaz Lake should be added to the list. State Board staff assessed trout data from Topaz Lake and concluded that mercury concentrations were below the evaluation guidelines. EPA added	The proposed 303(d) List portion of the 2012 California Integrated Report was developed based all readily available data and information that was submitted as part of the notice of solicitation,

Final Comment Summary and Responses

Proposed Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) Portion of the 2012 California Integrated Report

Comment Deadline: 12pm on February 5, 2015

No.	Author	Comment	Response
		Topaz Lake to the Nevada 303(d) list on October 23, 2014 due to high mercury concentrations in bass, a species that is more likely to accumulate mercury.	which had a deadline of August 30, 2010. The data provided by Nevada is outside the solicitation period and therefore will not be addressed until a future Listing Cycle.
13.3	United States Environmental Protection Agency, Region IX	We encourage State Board to consider and incorporate off-cycle decisions for future 303(d) listing decisions due to at least one Regional Board approving off cycle listings/delistings.	Comment noted. This is consistent with the recently amended Listing Policy, see specifically section 6.1.2.