

Comment Summary and Responses
**Proposed Amendment to the Water Quality Control Policy for Developing California's Clean
Water Act Section 303(d) List (Listing Policy)**

Comment Deadline: 12:00 p.m. on December 22, 2014

Staff's initial responses below were emailed to the pertinent lyrics list(s) and posted on January 26, 2015. On January 28, 2015, staff made minor revisions to the responses column and responds to comment number 24 (timely submitted but inadvertently not routed to staff), reflected in underline and ~~strikeout~~ text.

No.	Commenter
1.	California Coastkeeper Alliance and Heal the Bay
2.	California Stormwater Quality Association
3.	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed
4.	Center for Biological Diversity
5.	City of Los Angeles, Bureau of Sanitation
6.	City of San Diego, Transportation & Storm Water Department
7.	County of San Diego, Department of Public Works
8.	Patrick Shreffler
9.	Drew Fenton
10.	Heal the Ocean
11.	Las Virgenes-Trunfo Joint Powers Authority
12.	McAdams lands LP
13.	O'Laughlin & Paris LLP for the San Joaquin Tributaries Authority
14.	Partnership for Sound Science in Environmental Policy
15.	Port of Long Beach and Port of Los Angeles
16.	Quartz Valley Indian Reservation
17.	Sacramento Regional County of Sanitation District
18.	Southern California Alliance of POTWs
19.	Western States Petroleum Association
20.	Gary Hess
21.	Joyce Dillard
22.	Sacramento Stormwater Quality Partnership
23.	Stewards of the Sequoia
24.	California Association of Sanitation Agencies

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1.0	California Coastkeeper Alliance and Heal the Bay	The State Water Board should require all regions to be assessed during every two-year listing cycle.	<p>Clean Water Act section 303(d)(1) requires states to identify “those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) [effluent limits for point source discharges of pollutants] of this title are not stringent enough to implement water quality standards applicable to such waters.” 40 Code of Regulations section 130.7(d) requires states to submit such lists to U.S. EPA biennially on every even numbered year.</p> <p>Since the State Water Resources Control Board (State Water Board) adopted the Water Quality Control Policy for Developing California’s Clean Water Act’s Section 303(d) List (the Listing Policy) in 2004, the State Water Board and the nine Regional Water Quality Control Boards (Regional Water Boards) (collectively, the Water Boards), have been unable to assess within a two year cycle the waters within all nine regions. The current process for evaluating all waters within each of the nine Regional Water Boards results in a new 303(d) List every 6 years, or more, based on potentially outdated data. The Amendment to the Listing Policy is intended to remedy this issue.</p>

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			<p>The proposed Amendment to the Listing Policy will allow the two-year listing cycle to include an assessment of a portion of the Regional Water Boards’ waters to allow the Water Boards to approve an updated 303(d) List coinciding with every even year.</p>
1.1	California Coastkeeper Alliance and Heal the Bay	<p>“The State Water Board is proposing to amend the Listings Policy to “clarify that the 303(d) List is not required to include assessments from all regions every listing cycle.” The Clean Water Act requires states to identify <i>all bodies of water</i> for which technologically-based effluent limitations are insufficient to maintain water quality standards. Specifically, Section 303(d)(1)(A) states that each “state shall identify those waters <i>within its boundaries</i> for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters.” The U.S. EPA’s Guidance on 303(d) Listings also concludes that the Clean Water Act requires states to provide – <i>every two years</i> – an “assessment of the quality of <i>all their waters</i> and a list of those that are impaired or threatened. The Clean Water Act is explicit – all bodies of water within a State’s boundaries shall be assessed for impairment every two years.”</p>	<p>See Response to Comment 1.0.</p> <p>Clean Water Act section 303(d)(1)(A) does not explicitly provide that a state is required to provide “new” listing assessments for “all” bodies of waters within its borders for each listing cycle. Neither does the Clean Water Act require a state to submit such a list to U.S. EPA every two years. The two-year submission or listing cycle requirement comes from the water quality standards regulations. (See 40 CFR § 130.7(d).)</p> <p>In accordance with the Listing Policy Amendment, the State Water Board proposes to submit to U.S. EPA a 303(d) List comprised of new listings and delistings for waters within a portion of the nine Regional Water Board basins, along with the former listing and delisting assessments for the remaining basins as previously reported and approved by U.S. EPA. However, the Listing Policy Amendment also provides that Regional Water Boards that are “off</p>

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			<p>cycle” and not required to assess and report on waters within their basins for a particular listing cycle have discretion to administer the listing process for one or more water segments that would lead to a direct listing change from the previous Listing Cycle. (See Listing Policy Amendment Section 6.1.2.) If the Listing Policy is amended to allow for assessment of a subset of the Regional Water Boards’ basins every two years, the State Water Board anticipates being able to timely comply with reporting requirements with the submission of listing and delisting assessments based on more current data and information.</p> <p>U.S. EPA has indicated support for the overall strategy to be achieved by the Listing Policy Amendment concerning the listing cycle encompassing a portion of the waters within the State.</p> <p>Several other states have submitted 303(d) Lists with new assessments of a portion of their waters within their respective boundaries—and U.S. EPA has approved such lists as complying with the Clean Water Act’s reporting requirements.</p>

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			<p>The commenter does not provide a citation to the particular U.S. EPA Guidance to which it refers, however, it is important to note that the State Water Board is not legally bound to U.S. EPA’s guidance and, in any event, such guidance appears to be outdated. In 2009, U.S. EPA provided updated guidance and information for states to use in the preparation of their 2010 Clean Water Act Integrated Reporting and Listing Decisions (Memorandum from Suzanne Schwartz, Acting Director, Office of Wetlands, Oceans, and Watersheds, U.S. EPA, to Water Division Directors, Regions 1-10, U.S. EPA (May 5, 2009) (located at http://www.epa.gov/owow/tmdl/guidance/final52009.pdf.) In that memorandum, Acting Director Ms. Schwartz provides “[T]his guidance updates previous guidance and, to the extent it is different, supersedes previous guidance.” (Ibid., pg.1.) Enclosure 1 of the memorandum describes U.S. EPA’s support for a “rotating basin approach” for a state’s section 303(d) submittals:</p> <p>“EPA continues to support the rotating basin approach as an effective tool for States to make water quality assessment determinations and manage their water quality programs. In this approach, available assessment resources are</p>

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			<p>concentrated or targeted in defined watersheds for a specified period of time, thus allowing for data to be collected and assessed in a spatially and temporally “focused” manner. Over time, every portion of the state is targeted for monitoring and assessment (often over a four or five year period).”</p> <p>“The rotating basin approach provides multiple advantages to States, including the effective use of limited State resources and higher resolution assessments of watersheds over time.”</p> <p>“States using a rotating basin approach may consider explaining in their data solicitation that a special emphasis is being placed on obtaining and considering data and information from the basin of interest, but that data and information from outside of the basin may also be considered for water quality assessments, NPDES permitting decisions, TMDL development, compliance monitoring, etc. EPA expects that States will, consistent with their assessment and listing methodologies, continue to consider all existing and readily available data and information in making water quality attainment determinations.”</p>

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			<p>“EPA expects that States using a rotating basin approach will continue to submit a 303(d) list/IR on a biennial basis that reports on the water quality status of all waters in the State.</p> <p>However, as a practical matter, EPA understands that the submittal would primarily reflect more up-to-date data and information from the basins targeted since the previous reporting cycle and the reported attainment status of waters in the non-targeted basin could largely remain unchanged.”</p> <p>(Emphasis added.) The listing cycle approach proposed by the Listing Policy Amendment is consistent with the Clean Water Act, its implementing regulations, and U.S. EPA’s current guidance.</p>
1.2	California Coastkeeper Alliance and Heal the Bay	“U.S. EPA Guidance contradicts the State Water Board’s assertion that the “U.S. EPA staff have indicated that they support [a rotating basin] approach.” The U.S. EPA describes the “rotating basin approach” as concentrating available monitoring resources “in one portion of the state for a specified period of time, thus allowing for data to be collected and assessed in a spatially and	<p>See Response to Comments 1.0 and 1.1.</p> <p>U.S. EPA staff has indicated support for the strategy to be achieved by the Listing Policy Amendments concerning the listing cycle encompassing new listings and delistings assessments concerning a portion of the waters within its boundaries (“on-cycle” regions), along</p>

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		<p>temporally focused manner. Over time, every portion of the state is targeted for this higher resolution monitoring and assessment effort...” However, while the U.S. EPA endorses the rotating basin approach, it does so only while making it clear that “states are expected to actively solicit data and information on a <i>State-wide basis for all waters within their jurisdiction.</i>” The U.S. EPA goes on to find that “the state must consider <i>all existing and readily available data and information</i> during the development of its [303(d) Listing] Report, <i>regardless of where in the state the data and information were generated.</i>” The rotating basin approach is a strategy to focus monitoring resources, but does not excuse the State Water Board from assessing all waterway segments within California’s boundaries every listing cycle.”</p>	<p>with existing assessments for the remaining waters (“off-cycle” regions). State Water Board staff communicated that component of the amendment to the Listing Policy verbally via the Integrated Report Roundtables, with which U.S. EPA staff participates, throughout the years 2013 and 2014, and in writing. (Letter from Victoria A. Whitney, Deputy Director, Division of Water Quality, SWRCB, to Jane Diamond, Director, Water Division, U.S. EPA Region 9 (July 9, 2013) (available at: http://www.swrcb.ca.gov/water_issues/programs/tmdl/docs/ltr_epa_integrprt.pdf)</p> <p>U.S. EPA staff indicated that they concurred with the proposals contained in the Listing Policy Amendment concerning the listing approach, among other proposals contained in the Amendment.</p> <p>The amendment to the Listing Policy calls for a continuous solicitation of data and allows Regions that are not “on-cycle” to include listing and delisting recommendations for waters within their (off-cycle) regions.</p>
1.3	California Coastkeeper Alliance and Heal the Bay	“The Clean Water Act mandates that all waterbodies within California’s boundary shall be assessed for impairment every two years. The U.S. EPA is clear that it only endorses the rotating	See Responses to Comments 1.0 through 1.2 above.

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		basin approach if the State Water Board continues to assess all waterbodies statewide. The State Water Board is required to include assessments from all regions each listing cycle.”	
1.4	California Coastkeeper Alliance and Heal the Bay	The State Water Board should retain the requirement for all 303(d) Lists to be approved by the Board Members at a public Water Board meeting.	<p>The proposed Listing Policy Amendment’s process change regarding approval of the 303(d) List allows either the State Water Board or the Executive Director to take action on the 303(d) List on behalf of the State Water Board. In every listing cycle, the State Water Board may elect to undertake review and approval of the 303(d) List.</p> <p>The amendment to the language in Section 6.3 of the Listing Policy states:</p> <p>“The State Water Board Executive Director or the State Water Board shall approve the section 303(d) list. Before the Executive Director or the State Water Board approves the section 303(d) list, the State Water Board shall provide advance notice and opportunity for public comment. Public comment shall be limited to listing recommendations that are timely requested for review pursuant to section 6.2 unless the Executive Director or the State Water Board elects to consider recommendations on other waters. Upon approval by the Executive Director or State</p>

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			<p>Water Board, the statewide section 303(d) list and supporting fact sheets shall be submitted to USEPA for approval as required by the Clean Water Act.”</p> <p>In both circumstances, the public shall be entitled to provide comment of the listing decisions timely sought for review by the State Board or the Executive Director and the listing recommendations for which the State Water Board or the Executive Director proposes</p> <p>Since the Listing Policy was adopted, the State Water Board has made relatively few changes to listing recommendations from those approved by the Regional Water Boards. The changes to the policy do not change the process for a party to request State Board review (either by the board or by the Executive Director) of a Regional Water Board recommendation but does allow for a streamlined approval process when warranted.</p> <p>This is also consistent with how recommendations are made in other states that are run by environmental departments and do not have an appointed quasi-legislative Water Board. In these States the 303(d) List is approved by the head of the department tasked with administering the</p>

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1.5	California Coastkeeper Alliance and Heal the Bay	<p>The Executive Officer should not have the authority to finalize a 303(d) List without a public hearing and vote by the Board members. The State Water Board’s explanation for this Policy modification is to promote “efficiencies in the manner in which data is solicited and assessed, and streamlines public participation and review process. The proposal will allow for timelier 303(d) List submittals by the State Water Board.” However, the State Water Board has made no finding that the current approach of holding a final adoption hearing before the Board members delays the Listing processes. In practice, 303(d) listing delays seem to be largely the result of constrained staff resources at the regional level. We are unaware of any instance where a Listing was delayed due to the adoption hearing.</p>	<p>Listing Process.</p> <p>See Response to Comment 1.4. State Water Board approval at a public meeting requires more internal administrative processes, which can create a significant loss of time. Utilizing the Executive Director approval process could save time, while still allowing for the public to provide comments and waterbody-pollutant assessments for which timely review has been sought. In addition there is nothing that would prevent the State Water Board from administering that process if such review is deemed to be warranted. Furthermore, the public rarely requests review of specific Regional Water Board listing decisions consistent with the requirements of Section 6.3 of the Listing Policy. Generally the State Water Board only changes a handful of listing or delisting recommendations based on recommendations from State Water Board staff.</p>
1.6	California Coastkeeper Alliance and Heal the Bay	<p>The adoption of 303(d) Lists is a critical component of the Clean Water Act, and should be done with a full public process. As explained above, the Section 303(d) is the Clean Water Act’s “safety net” and is essential to restoring waters to conditions safe for swimming, fishing, drinking, and other “beneficial uses” that citizens are able to enjoy. Moreover, the Ninth Circuit has long held that “Congress identified public</p>	<p>See Responses to Comments 1.4 and 1.5.</p> <p>The State Water Board agrees that public participation in the compilation of the 303(d) List is essential to foster public awareness and aid informed decision making in complying with the Clean Water Act and the Porter-Cologne Water Quality Control Act. The Listing Policy Amendment continues to advance those goals</p>

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		<p>participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act's approach and philosophy.” Given the importance of 303(d) Listings, and Congress’ intent that public participation be a critical component of the Clean Water Act, we request the State Water Board retain the requirement that 303(d) Listings be approved by the Board members rather than the Executive Officer, or else provide additional information as to the rationale and desired effect of the proposed change.</p>	<p>while allowing for the reduction of duplicative Water Board processes when warranted. The listing recommendations made at the Regional Water Board level involve a written comment period and public participation after advance notice of workshops and board hearing. The Executive Director approval still requires a public comment period. At any time the Executive Director or State Water Board member may decide to have the approval agenda for a State Water Board meeting. Furthermore, the public can participate at the U.S. EPA approval level if they disagree with any recommendations made by the Water Boards.</p>
1.7	California Coastkeeper Alliance and Heal the Bay	<p>To ensure the best data and evidence continues to be incorporated into the 303(d) listing process, and that the State Water Board’s Listing Policy Amendment complies with the Clean Water Act, the State Water Board should not adopt a definition of “readily available data” that is too narrow, excludes data or evidence, nor places unreasonable barriers upon the submittal of evidence and data in support of 303(d) listings.</p>	<p>The State Water Board generally agrees with this comment.</p>
1.8	California Coastkeeper Alliance and Heal the Bay	<p>The State Water Board should adopt a definition of “Readily Available Data and Information” that does not require data and evidence to be submitted via the California Environmental Data Exchange Network. This proposed definition of “Readily</p>	<p>The proposed Listing Policy Amendment provides at Section 6.1.1 that: ““Readily Available Data and Information” is data and information that can be</p>

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		<p>Available Data and Information” will place an undue burden for submitting data and evidence upon stakeholders, particularly those with limited resources to collect and analyze data, which ultimately, will limit the public’s opportunity to submit data and engage in the 303(d) listing process.</p>	<p>submitted to [CEDEN], which can be accessed via www.ceden.org. If CEDEN is unable to accept a particular subset of data and information, the State Water Board or the Regional Water Board may accept that data and information if it meets the formatting and quality assurance requirements detailed in section .1.4 of the Policy and the notice of solicitation for the current Listing Cycle.”</p> <p>The State Water Board disagrees with the assertion that requiring the use of CEDEN will place an undue burden upon stakeholders. The existing Listing Policy requires data to be submitted in SWAMP data format. (Listing Policy, Section 6.1.2.1.) Staff developing online tools and trainings for working with CEDEN confirm that if data is being collected in SWAMP format, which is currently required under Section 6.1.2.1 of the existing Listing Policy, that upload into CEDEN would be readily achievable and not burdensome.</p> <p>CEDEN program managers will also be providing workshops and trainings to facilitate greater understanding of the needs of CEDEN users, develop tools to enhance the utility of CEDEN,</p>

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			<p>and provide training on using the CEDEN system. Currently, a workshop is scheduled for March 16, 2015, which will also accommodate participants who need to participate remotely through a video broadcast and a call-in number.</p> <p>CEDEN has four Regional Data Centers to aid stakeholders in successful submittal of data into CEDEN. Furthermore, the utilization of CEDEN will allow the data collected to be analyzed and used by many other programs, making the resources spent on collecting and analyzing that data more valuable and widely utilized. Data that cannot be submitted into CEDEN because CEDEN is not designed to accept it, such as photographic evidence and continuous temperature data, will be solicited and accepted if it meets the requirements of Sections 6.1.2 and 6.1.4 of the Listing Policy and as outlined in the solicitation memo.</p> <p>Finally, the Listing Policy Amendment has been revised (at section 6.1.1) to clarify that the requirement, that all readily available data and information be submitted to CEDEN, will not be triggered until the Water Boards send out the next notice of solicitation. The next notice of solicitation will seek data and information to be</p>

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			<p>submitted to CEDEN and assessed for the 2018 Integrated Report. In the meantime, the State Water Board’s 2010 solicitation memorandum, which sought data and information for waters in all nine Regional Water Board’s basins, shall be assessed and considered as part of the Integrated Reports for the years 2012, 2014, and 2016. As a result, the Listing Policy Amendment’s requirement that all data and information must generally be submitted to CEDEN will not be implicated until (several) years from the effective date of the Listing Policy Amendment which will provide sufficient time for persons and organizations unfamiliar with the CEDEN system to obtain training, if any is needed.</p>
1.9	California Coastkeeper Alliance and Heal the Bay	The State Water Board should encourage but not require data and evidence to be submitted via the California Data Exchange Network. Requiring the use of CEDEN will unintentionally disqualify the submittal of significant portions and formats of evidence and data in the 303(d) listing process.	<p>See Response to Comment 1.8.</p> <p>Requiring the use of CEDEN will ensure the data used for the 303(d) listing process is of a high quality and includes the necessary information for efficient assessments. Regional Data Centers currently work with stakeholders to ensure data conforms to CEDEN, other online tools are currently under development. If data cannot be accepted by CEDEN (for example photographic evidence) the solicitation memo will provide instructions for how to submit that information.</p>

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2.0	California Stormwater Quality Association	The listing policy should better incorporate methodologies of the sediment quality objectives (SQO’s). Proposal of SQO Part I should be incorporated into Section 6.1.3 (Evaluation Guideline Selection Process) by reference. Further, current language related to causality should be modified to reference the stressor identification process described within SQO Part I to ensure that proper causal assessments are performed before linking stressors to impairments of sediment quality.	<p>After the State Water Board adopted the Listing Policy, the board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries— Part I, Sediment Quality, which contains narrative sediment quality objectives (SQOs) to protect benthic communities and human health. Part 1 contains the first phase of three phases. Phase 1 is the implementation program. The resolution adopting the SQO’s (No. 2008-0070) explains that Phase 2 involves extensive sediment sampling and further development of tools and indicators and other work. Phase 3 is proposed to include a framework to protect fish and wildlife. The resolution provides that the phased process is an iterative one and that during the development of the Phases 2 and 3, staff would continue to evaluate the tools developed during Phase_1 and the implementing language.</p> <p><u>Part I of the SQOs (at Sections V.A, V.I, and V.J) describes the MLOE approach to assess the sediment quality objective supporting aquatic life, benthic community protection. Assessment for the aquatic life sediment quality objective must use all three lines of evidence (sediment toxicity, benthic community condition, and sediment chemistry). Part I of the SQOs at Section VII.E.8 (beginning on page 16), describes the relationship</u></p>

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			<p><u>between the SQO's and the Listing Policy. Three directives are provided (top of page 17) as to the relationship between the new SQO for aquatic life and the Listing Policy, which are as follows:</u></p> <ol style="list-style-type: none"> 1. <u>Water segments shall be placed on the section 303(d) list for exceedance of the narrative sediment quality objective for aquatic life protection in Section IV.A. of Part 1 only if the number of stations designated as not achieving the protective condition as defined in Sections V.I. and V.J. supports rejection of the null hypothesis, as provided in Table 3.1 of the State Water Board's Listing Policy.</u> 2. <u>Water segments that exhibit sediment toxicity but that are not listed for an exceedance of the narrative sediment quality objective for aquatic life protection in Section IV.A. shall continue to be listed in accordance with Section 3.6 of the Listing Policy.</u> 3. <u>If a water segment is listed under Section 3.6 of the Listing Policy and the Regional Water Board later determines that the applicable water quality standard that is impaired consists of the sediment quality objective in Section IV.A. of Part 1 and a bay or estuarine habitat beneficial use, the Regional Water Board shall reevaluate the listing in accordance with</u>

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			<p><u>Sections V.I and V.J. If the Regional Water Board reevaluates the listing and determines that the water segment does not meet the criteria in subsection a. above, the Regional Water Board shall delist the water segment.</u></p> <p>In the resolution for Part 1 of the SQOs, the State Water Board instructs staff to take necessary action to ensure consistency between the Listing Policy and Part 1 SQOs.</p> <p>Section 6.1.3 of the Listing Policy explains that evaluation guidelines shall be used to evaluate and interpret narrative water quality objectives and <u>assess standards attainment used for developing the section 303(d) list.</u> Section 6.1.3 provides a process the Water Boards must follow to select an evaluation guideline.</p> <p><u>Because Part I SQO guidelines and provisions were adopted to evaluate and assess sediment quality objectives and standards attainment,</u> tThe Listing Policy Amendment adds language to incorporate the use of the methods and procedures adopted to evaluate and interpret sediment quality objectives, if the sediment quality objective applies. This change, at the <u>Listing Policy Amendment Section 6.1.3.1.A</u> , makes clear that</p>

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			<p>methods and procedures adopted to evaluate and interpret SQOs must be used if the sediment quality objectives apply. <u>Furthermore, in response to comments received, staff has added language to Section 6.1.3 that states “and any provisions adopted to develop the section 303(d) list.” Section 6.1.3.1.A of the Listing Policy Amendment now states:</u></p> <p><u>“If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objectives and any provisions adopted to develop the section 303(d) list.</u></p> <p><u>Provisions adopted for the development of the section 303(d) List may include both listing and delisting recommendations. The additional language addresses the commenters concerns without having to add additional language to Section 3 and Section 4 of the Listing Policy. The three directives noted above (contained in Part I of the SQOs), which provide direction on the relationship between the new SQO for aquatic life and the Listing Policy, are provisions adopted for the development of the section 303(d) list. With the Listing Policy Amendment, such provisions would be utilized in water board staff’s</u></p>

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			<p data-bbox="1260 337 1881 402"><u>development of the section 303(d) list where the sediment quality objectives apply.</u></p> <p data-bbox="1260 448 1898 766">The Listing Policy Amendment continues to explain at Section 6.1.3, subsection 1.B, that “[i]f no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the Regional Water Boards may select sediment quality guidelines that have been published in peer-reviewed literature or by state or federal agencies.” (Listing Policy Amendment, Section 6.1.3.)</p> <p data-bbox="1260 812 1906 1347">Adding additional language to the Listing Policy Amendment to further incorporate specific references of Part 1 SQOs is not necessary and could require additional amendments to the Listing Policy every time the sediment quality objectives (SQOs) are revised which would be inefficient and redundant. Water Board staff are aware of Part 1 SQOs and the methodologies and procedures outlined to interpret them. In addition, the Water Boards are currently working with stakeholders on a pilot project to use the SQOs within a total maximum daily load in Southern California. The pilot project may provide additional insights in the use of the SQOs for impairment assessments.</p>

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2.1	California Stormwater Quality Association	Add the following language to end of paragraph I of 3.6 “Water/Sediment Toxicity” in the listing policy: “Where SQOs are relevant and apply, toxicity data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in SQO Part I.”	See Response to Comment 2.0. The sediment quality objectives methodology and usage is required. Water Board staff are aware of such methods, and further language is not necessary.
2.2	California Stormwater Quality Association	Sections A – C should not apply where the CASQA Comments on the Proposed Amendment to the Water Quality Control Policy for Developing the Clean Water Act Section 303(d) List sediment quality objectives apply. Therefore, where sediment quality objectives apply, we request the following language be included in lieu of Sections A – C: “Where impairments of sediment quality are identified through the multiple lines of evidence approach as described in SQO Part I, listings should be only for the impairment of sediment quality. Upon performance of the stressor identification process per SQO Part I and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”	See Responses to Comments 2.0 and 2.1. If the SQO and Multiple Lines of Evidence (MLOE) approach is utilized then assessment staff will only recommend a listing for sediment for the contributing pollutant or pollutants identified by the stressor identification process. Staff will not use the individual LOEs collected for the development of an MLOE SQO for independent assessments and related listing recommendations.
2.3	California Stormwater Quality Association	3.8 Adverse Biological Response Add language at the end of the section to incorporate Part II of the Sediment Quality Objectives when adopted as follows: “Upon adoption of Part II Sediment Quality	See Responses to Comments 2.0 and 2.1. Part II of the Sediment Quality Objectives have not been adopted and should not be referenced. Furthermore, by stating that particular sediment

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		Objectives related to bioaccumulation, the evaluation should follow guidelines set forth in Part II of the SQO Plan where applicable.”	quality objectives should be utilized would interfere with application of new methods that were later developed.
2.4	California Stormwater Quality Association	3.9 Degradation of Biological Populations and Communities Add language at the end of the section to read: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in SQO Part I. Where impairments of sediment quality objectives are identified, listings should be for the impairment of sediment quality. Upon performance of the stressor identification process per SQO Part I and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”	See Responses to Comments 2.0, 2.1, and 2.2. In addition, Water Board staff are working to develop a Biological Integrity Policy that may also influence how benthic communities are assessed in the absence of data for multiple lines of evidence.
2.5	California Stormwater Quality Association	6.1.5.8 Evaluation of Bioassessment Data Add a fifth bullet as follows: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in SQO Part I.”	See Responses to Comments 2.0, 2.1, and 2.2.
3.0	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	During the TMDL development, several listings that were developed prior to the Listing policy were found to have been based on outdated or erroneous data. The Stakeholders recommend modifying several sections of the Listing Policy to	See Response to Comment 2.0.

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		better incorporate and clarify the need to follow the methodologies of the Water Quality Control Plan for Enclosed Bays and Estuaries Plan Part 1: Sediment Quality (SQO Part 1), and should be incorporated where appropriate in the Listing Policy.	
3.1	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	3.6 Water/Sediment Toxicity: Sediment toxicity data collected in waterbodies where SQOs apply should be interpreted in accordance with procedures in the SQO Part 1. Add the following language at the end of paragraph one: “Where SQO’s are relevant and apply, toxicity data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”	See Responses to Comments 2.0, 2.1, and 2.2.
3.2	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	Sections A – C are not applicable where a triad of data (chemistry, bioassessment, and toxicity) is available. Causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII.F). For clarity, Sections A-C should not apply where the sediment quality objectives apply. Where sediment quality objectives apply, the following language should be included in lieu of Sections A-C of 3.6 WATER/SEDIMENT TOXICITY: “Where impairments of sediment quality are identified through the multiple lines of evidence approach as described in the SQO Part 1, listings	See Responses to Comments 2.0, 2.1, and 2.2.

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		should be only for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor identification process, the listing may be modified to reflect the pollutant contribution to or causing the observed impact.”	
3.3	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	Biological data collected in waterbodies where SQOs apply should be interpreted in accordance with procedures in the SQO Part 1. In addition, causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII.F). Add language to the end of section 3.9 DEGRADATION OF BIOLOGICAL POPULATIONS AND COMMUNITIES: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1. Where impairments of sediment quality objectives are identified, listings should be for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”	See Responses to Comments 2.0, 2.1, and 2.2. In addition, Water Board staff are working to develop a Biological Integrity Policy that may also influence how benthic communities are assessed in the absence of data for multiple lines of evidence.
3.4	Stakeholders Implementing	Due to rigor of the SQO Part 1, it is unreasonable and impractical to require collection of the	See Responses to Comments 2.0, 2.1, and 2.2.

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	TMDLs in the Calleguas Creek Watershed	amount of data necessary to delist based on the binomial distribution. Where a stressor identification has been performed and the stressor has been identified, the sediment quality listing should be removed. Add a new section under Section 4 CALIFORNIA DELISTING FACTORS: <u>“Waterbodies listed for an impairment of sediment quality that no longer show impairment as defined in the SQO Part 1 shall be removed from the Section 303(d) list. Where a stressor identification study has been performed as required under the SQO Part 1 and the stressor has been identified, the sediment quality listing shall be removed from the Section 303(d) List.”</u>	<p>The collection of data sufficient for the use of the binomial distribution is not a requirement of the listing policy. Furthermore, if a stressor identification resulted in a finding that warranted a delisting, the waterbody could be delisted using section 4.11 “Situation-Specific Weight of Evidence Delisting Factor” contained in the Listing Policy.</p> <p>Section 4 of the Listing Policy already requires the use of updated water quality objectives and reassessment of prior data utilizing those new objectives. “If objectives or standards have been revised and the site or water meets water quality standards, the water segment shall be removed from the section 303(d) list. The listing of a segment shall be reevaluated if the water quality standard has been changed.”</p> <p>The SQO Part 1 section VII.F subsection 1(pages 17-18), details the stressor identification process and the results that would warrant delisting a waterbody initially identified as exceeding the SQOs. Adding the proposed language to the Listing Policy is not necessary.</p>
3.5.0	Stakeholders Implementing TMDLs in the	Language that clarifies procedures developed within SQO Part 1 should be followed and should supersede previous listing analysis where the	<p>See Responses to Comments 2.0, 2.1, and 3.4.</p> <p>The requested language is not necessary.</p>

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	Calleguas Creek Watershed	required data is available under the SQO Part 1. Language should be added to 6.1.3A EVALUATION GUIDELINE SELECTION PROCESS to clarify the SQO: “If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective <u>in accordance with the SQO Part 1. Analysis to support listing decisions conducted utilizing the SQO Part 1 methods and procedures supersede previous analyses conducted utilizing one or more of three lines of evidence independently.</u> ”	
3.5.1	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	Add language to Section 6.1.3.1.B to clarify the use of sediment quality guidelines: “If no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the regional water boards may select sediment quality guidelines that have been published in the peer-reviewed literature or by state or federal agencies. <u>However, once sufficient data exists to interpret sediment quality objectives, previous analyses utilizing sediment quality guidelines will be superseded and independent lines of evidence shall no longer be considered.</u> Acceptable guidelines include selected values (e.g. effects range-median, probable effects level, probable effects concentration), and other sediment quality	See Response to Comment 3.4. Water Board staff may elect to utilize the more stringent effects range-low values if it is considered to be more protective of aquatic life and/or human health. In addition, if a party feels that an inappropriate guideline has been used to interpret a narrative Water Quality Objective – by selecting one that is over or under protective – the party may comment on their use to the applicable Regional Water Board and request review of the listing decision to the State Water Board with 30 days after the applicable Regional Water Board approves their 303(d) List.

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		<p>guidelines. Only those sediment guidelines that are predictive of sediment toxicity shall be used (i.e., those guidelines that have been shown in published studies to be predictive of sediment toxicity in 50 percent or more of the samples analyzed). <u>Note that effects range-low values are predictive of sediment toxicity in 10 percent of samples analyzed and are not appropriate sediment quality guidelines.</u>”</p>	
3.6	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	<p>Biological data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1. Add a 5th bullet point to 6.1.5.8 EVALUATION OF BIOASSESSMENT DATA: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”</p>	See Responses to Comments 2.0, 2.1, and 2.2.
3.7	Stakeholders Implementing TMDLs in the Calleguas Creek Watershed	<p>Request using all available data submitted into CEDEN [for current report.] Utilizing only data submitted in 2010 solicitation would result in at least five years of additional data being left out of the analysis for the Los Angeles Region. Not including the more recent data in the next 303(d) listing would result in waterbodies not being delisted until at least 2018.</p>	<p>This comment appears to address the Water Boards’ consideration of the Clean Water Act Section 303(d) List and is not within the scope of the proposed amendment to the Listing Policy. The proposed amendment allows Regions that are “off-cycle” to included assessments of more recent data to recommend listings and delistings.</p>
4.0	Center for Biological	<p>In limiting “readily available data and information” solely to data submitted to the</p>	See Responses to Comments 1.8 and 1.9.

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	Diversity	CEDEN, this amendment improperly limits the directive of the Clean Water Act and implementing regulations, 33 U.S.C. §1313(d)(1)(c), and 40 C.F.R. § 130.7(b)(5), which require states to consider “all existing and readily available water quality-related data and information.” (Emphasis added).	The propose Listing Policy Amendment is not limiting the scope of the consideration for “all readily available data and information.” The proposed amendment is specifying the format of the data to be submitted so that it can be assessed in a more efficient and consistent manner that improves transparency. This is consistent with, and a refinement of, what has been done in previous notices of solicitation.
4.1	Center for Biological Diversity	Amend the listing policy to explicitly require that the Regional and State Water Resources Control Boards evaluate ocean acidification as part of the biennial assessment.	This comment is not within the scope of the State Water Board’s proposed amendment to the Listing Policy. Ocean acidification data has not been well characterized in California. Assessments cannot be performed until data and applicable water quality objectives or evaluation guidelines exist.
5.0	City of Los Angeles, Bureau of Sanitation	Amend Section 6.1.3.1.A of listing policy with following SQO Part 1 language: “If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective. <u>Listing decisions based on the sediment quality objectives shall supersede analyses based on sediment quality guidelines.</u> ”	See Response to Comment 3.4.
5.1	City of Los Angeles, Bureau of Sanitation	Amend Section 6.1.3.B of listing policy with following SQO Part 1 language: “If no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the regional water boards may select	See Responses to Comments 2.0, 2.1, 2.2, and 3.4.

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		<p>sediment quality guidelines that have been published in the peer-reviewed literature or by state or federal agencies. <u>However, once sufficient data exists to interpret sediment quality objectives, previous analyses utilizing sediment quality guidelines will be superseded and independent lines of evidence shall no longer be considered.</u> Acceptable guidelines include selected values (e.g. effects range-median, probable effects level, probable effects concentration), and other sediment quality guidelines. Only those sediment guidelines that are predictive of sediment toxicity shall be used (i.e., those guidelines that have been shown in published studies to be predictive of sediment toxicity in 50 percent or more of the samples analyzed). <u>Note that effects range-low values are predictive of sediment toxicity in 10 percent of samples analyzed and are not appropriate sediment quality guidelines.</u>”</p>	
6.0	City of San Diego, Transportation & Storm Water Department	<p>Recommends using data in CEDEN during the upcoming integrated reporting efforts. Utilizing only the data submitted as part of the 2010 solicitation as suggested in the November 12 2013 letter would result in at least four years of additional data being left out of the analysis.</p>	<p>See Responses to Comments 1.0, 1.1, 1.8, and 3.7.</p>
6.1	City of San Diego, Transportation &	<p>[Stakeholder] recommends that the State Board provide a mechanism for interested parties to</p>	<p>See Response to Comment 1.1.</p>

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	Storm Water Department	submit requested revisions directly to the State Board rather than solely relying on Regional Water Boards to decide when to administer off cycle processes. Reasoning: The regional boards often do not have the resources to conduct listing reviews and revisions, particularly in off-cycle periods.	The Regional Water Boards have staff and resources specifically budgeted to undertake the water quality assessment process every fiscal year. Because the “off-cycle” process would be new the commenters’ assertions are unfounded. The State Water Board relies on the local knowledge and expertise of Regional Water Board staff to make assessments and decision recommendations.
6.2	City of San Diego, Transportation & Storm Water Department	Add language to end of paragraph 1 of 3.6 WATER/SEDIMENT TOXICITY: “Where SQOs are relevant and apply, toxicity data shall be interpreted in accordance with multiple lines of evidence approach as outlined in the SQO Part 1.”	See Responses to Comments 2.0 and 2.1.
6.3	City of San Diego, Transportation & Storm Water Department	Add language to Sections A-C of 3.6 WATER/SEDIMENT TOXICITY: “Where impairments of sediment quality are identified through the multiple lines of evidence approach as described in the SQO Part 1, listings should only be for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1, and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”	See Responses to Comments 2.0 and 2.1.
6.4	City of San Diego, Transportation & Storm Water	Add the following language at the end of section 3.8 ADVERSE BIOLOGICAL RESPONSE: “Upon adoption of the Part 2 Sediment Quality	See Responses to Comments 2.0, 2.1, and 2.3.

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	Department	Objectives related to bioaccumulation, the evaluation should follow guidelines set forth in Part 2 of the SQO Plan where applicable.”	
6.5	City of San Diego, Transportation & Storm Water Department	Add the following language at the end of section 3.9 DEGRADATION OF BIOLOGICAL POPULATIONS AND COMMUNITIES: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple liens of evidence approach as outlined in the SQO Part 1. Where impairments of sediment quality objectives are identified, listings should be for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”	See Responses to Comments 2.0, 2.1, and 2.2.
6.6.0	City of San Diego, Transportation & Storm Water Department	Add the following language at the end of section 6.1.3.1.A EVALUATION GUIDELINE SELECTION PROCESS: “If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective in accordance with the SQO Part 1. Analysis to support listing decisions conducted utilizing the SQO Part 1 methods and procedures supersede previous analyses conducted utilizing one or more of three lines of evidence independently.”	See Responses to Comments 2.0, 2.1, and 2.2.

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6.6.1	City of San Diego, Transportation & Storm Water Department	Add the following language to section 6.1.3.B EVALUATION GUIDELINE SELECTION PROCESS: “If no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the regional water boards may select sediment quality guidelines that have been published in the peer-reviewed literature or by state or federal agencies. <u>However, once sufficient data exists to interpret sediment quality objectives, previous analyses utilizing sediment quality guidelines will be superseded and independent lines of evidence shall no longer be considered.</u> Acceptable guidelines include selected values (e.g. effects range-median, probable effects level, probable effects concentration), and other sediment quality guidelines. Only those sediment guidelines that are predictive of sediment toxicity shall be used (i.e., those guidelines that have been shown in published studies to be predictive of sediment toxicity in 50 percent or more of the samples analyzed). <u>Note that effects range-low values are predictive of sediment toxicity in 10 percent of samples analyzed and are not appropriate sediment quality guidelines.</u> ”	See Response to Comment 3.5.1.
6.7	City of San Diego, Transportation & Storm Water	Add a fifth bullet point in section 6.1.5.8 EVALUATION OF BIOASSESSMENT DATA <u>to ensure that bioassessment data collected as part</u>	See Responses to Comments 2.0, 2.1, and 2.2.

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	Department	<u>of a triad approach under the SQO Part 1 is interpreted accordingly: “Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”</u>	
7.0	County of San Diego Department of Public Works	<p>Comment #1: Toxicity data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1.</p> <p>Recommendation: Add language at the end of paragraph one.</p> <p><u>“Where SQOs are relevant and apply, toxicity data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”</u></p>	See Responses to Comments 2.0, 2.1, and 2.2.
7.2	County of San Diego Department of Public Works	<p>Comment #2: Sections A - C are not applicable where a triad of data (chemistry, bioassessment, and toxicity) is available. Causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII. F). For clarity, Sections A- C should not apply where the sediment quality objectives apply.</p> <p>Recommendation: Where sediment quality objectives apply, the following language should</p>	See Responses to Comments 2.0, 2.1, and 2.2.

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		<p>be included in lieu of Sections A - C.</p> <p><u>“Where impairments of sediment quality are identified through the multiple lines of evidence approach as described in the SQO Part 1, listings should be only for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor. The listing may be modified to reflect the pollutant contributing to or causing the observed impact.”</u></p>	
7.3	County of San Diego Department of Public Works	<p>Comment #3: Biological data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1. In addition, causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII.F).</p> <p>Recommendation: Add language at the end of the section.</p> <p><u>“Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1. Where impairments of sediment quality objectives are identified, listings should be for the impairment of</u></p>	See Responses to Comments 2.0, 2.1, and 2.2.

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		<p><u>sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact."</u></p>	
7.4	County of San Diego Department of Public Works	<p>Comment #4: The policy should directly address the methods to be used to delist water bodies that are listed for impairment of sediment quality but have more recent data demonstrating that there is no impairment. Because the SQO Part 1 encompasses chemistry, biological, and toxicity data, it is not clear which binomial distribution would be applicable. Further, due to the rigor of the SQO Part 1, it is unreasonable and impractical to require collection of the amount of data necessary to delist based on the binomial distribution. Lastly, where a stressor identification has been performed and the stressor has been identified, the sediment quality listing should be removed and replaced with a listing for the identified stressor.</p> <p><i>Recommendation:</i> Add a new section under Section 4 to address delisting factors related to sediment quality objectives.</p> <p><u>"Waterbodies listed for an impairment of sediment quality that no longer show impairment</u></p>	See Response to Comment 3.4.

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		<p><u>as defined in the SQO Part 1 shall be removed from the Section 303(d) list. Where a stressor identification study has been performed as required under the SQO Part 1 and the stressor has been identified. The sediment quality listing shall be removed from the Section 303(d) list and replaced with a listing for the identified stressor."</u></p>	
7.5	County of San Diego Department of Public Works	<p>Comment #5: The County recommends utilizing all available data in the California Environmental Data Exchange Network (CEDEN) during the upcoming integrated reporting efforts. Utilizing only the data submitted as part of the 2010 solicitation, as suggested in the November 12, 2013, letter from Nick Martorano to interested parties, would result in at least four years of additional data being left out of the analysis. The County expends significant resources collecting data to meet MS4 Permit and total maximum daily load (TMDL) requirements and all available data should be considered to ensure the 303(d) list reflects the most current information available.</p>	<p>See Responses to Comments 1.0, 1.8 and 3.7.</p> <p>We will be utilizing all the available data in CEDEN when we solicit data in the future as part of the 2018 Listing Cycle.</p>
7.6	County of San Diego Department of Public Works	<p>Comment #6: The County is broadly affected by TMDLs and thus has a strong interest in potential changes to listing procedures and decisions. Compliance can be resource intensive as the County's programs work to protect water quality in accordance with state and federal rules. As described in Section 6.1.2 of the proposed</p>	<p>See Response to Comment 6.1.</p> <p>It is in the best interest of the Regional Water Boards to be continually assessing data regarding currently listed and high priority waters. The State Water Board expects the Regional Water Board to be suggesting delistings both on and off</p>

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		<p>amendment to the Listing Policy, "off cycle" revisions may be considered. However, the Regional Boards are often under staffed to conduct listing reviews and revisions, particularly in off cycle periods. As such, the County recommends that the State Board provide a mechanism for interested parties to submit requested revisions directly to the State Board rather than relying on a Regional Water Board's decision of when to administer off cycle processes.</p>	<p>cycle consistent with performance reporting required by the TMDL program.</p>
7.7	County of San Diego Department of Public Works	<p>Comment #7: Additional language should be added to clarify that procedures developed within SQO Part 1 should be followed and should supersede previous listing analysis where the required data is available under the SQO Part 1.</p> <p><i>Recommendations:</i></p> <p>a. Language should be added to Section 6.1.3.1.A to clarify that the SQO Part 1 is used as appropriate.</p> <p>"If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective <u>in accordance with the SQO Part 1. Analysis to support listing decisions conducted utilizing the SQO Part 1 methods and procedures</u></p>	<p>See Responses to Comments 2.0, 2.2, 2.2, 3.4, and 3.5.1.</p>

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		<p><u>supersede previous analyses conducted utilizing one or more of three lines of evidence independently."</u></p> <p>b. Add language to Section 6.1.3.1.B to clarify the use of sediment quality guidelines:</p> <p>"If no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the Regional Water Boards may select sediment quality guidelines that have been published in the peer-reviewed literature or by state or federal agencies. <u>However, once sufficient data exists to interpret sediment quality objectives, previous analyses utilizing sediment quality guidelines will be superseded and independent lines of evidence shall no longer be considered.</u></p> <p>Acceptable guidelines include selected values (e.g., effects range-median, probable effects level, probable effects concentration), and other sediment quality guidelines. Only those sediment guidelines that are predictive of sediment toxicity shall be used (i.e., those guidelines that have been shown in published studies to be predictive of sediment toxicity in 50 percent or more of the</p>	

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		samples analyzed). <u>Note that effects range-low values are predictive of sediment toxicity in 10 percent of samples analyzed and are not appropriate sediment quality guidelines.</u> "	
7.8	County of San Diego Department of Public Works	<p>Comment #8: As noted previously, biological data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1.</p> <p>Recommendation: Add a fifth bullet.</p> <p><u>“Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”</u></p>	See Responses to Comments 2.0, 2.1, 2.2, and 3.3.
7.9	County of San Diego Department of Public Works	<p>Comment #9: Section 6.3 includes changes the review process of the final Statewide 303(d) List. Changes would allow the State Board Executive Director to finalize the proposed list and submit it directly to the EPA. At present, there are multiple opportunities for interested parties to address the proposed list, and the State Board holds a public hearing on the proposed final list and then approves it via vote. The changes would make it possible for the Executive Director to move the proposed list to public hearing and comment without the involvement of the State Board or</p>	See Responses to Comments 1.4, 1.5, and 1.6.

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		<p>their voted approval. These changes eliminate the ability of the public to express disagreement with the proposed list to the State Board for via their hearing process and vote. Furthermore, given the potential cost implications associated with new 303(d) listings, it would not be prudent for the State Board to reduce transparency in this process. The County feels that the proposed changes reduce the opportunity for public and municipal participation in the process and should not be enacted as included in the draft Listing Policy.</p> <p>Recommendation: New language providing the Executive Director with approval authority should be removed from the proposed language.</p>	
8.0	Patrick Shreffler	<p>The proposed listing of the North Fork of the Kern River is based on very flawed data. As a resident who deeply cares about the water quality and who fishes the stream regularly I can tell you that the samples that this listing is based on are not indicative of normal conditions. The drought and fires of that year drastically altered the norm. The water quality that year was even visibly different. Therefore you should drop your listing proposal and conduct multi-year and more accurate analysis. To make that listing now would cost the tax payers and the local economies while achieving no environmental gains. Let's spend our</p>	<p>Thank you for your comments. These comments are primarily outside the scope of the proposed Listing Policy Amendment. These comments should be directed to the Central Valley Regional Water Quality Control Board during approval of their Regional 303(d) List. See also Response to Comment 1.0, wherein the efficiencies created by the proposed Amendment are discussed.</p>

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		time and money on waters where it will do some good.	
9.0	Drew Fenton	“It is hard to believe the 2004 “Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List” was never adopted, and is inferred by the State Water Board by this action to adopt. The title page states “Adopted September 30, 2004”	The Listing Policy was in fact adopted by the State Water Board on September 30, 2004 via Resolution No. 2004-0063. The proposed action is for the State Water Board to consider adopting an amendment to the Listing Policy that was initially adopted in 2004.
9.1	Drew Fenton	“The purpose of the amendments is claimed “to create a more efficient and successful Clean Water Act 202(b) Integrated Report” and process.” What is the problem that the amendments are supposed to address? This is unclear to the public and not justified because the amendments appear to create an unsuccessful Integrated Report, and could jeopardize current process with a new process and removes/changes baseline data, will create new baselines, different and “limited” data. Loss of the last 10 year period of data collection, is not directed to be used.”	The purpose of the amendments was described in the Notice of Opportunity for Public Comment which states “The foregoing proposed changes to the Listing Policy involve changes to the process by which the 303(d) List is compiled, promotes efficiencies in the manner in which data is solicited and assessed, and streamlines public participation and review process. The proposal will allow for timelier 303(d) List submittals by the State Water Board.” The new process does not remove the data from the previous 10 years and will not jeopardize the current process. The State Water Board is implementing these amendments to make a more timely Integrated Report process which would be based on more current data and information.
9.2	Drew Fenton	The proposal document appears to have deleted language, without showing the strikeouts - The title, “Function Equivalent Document” (page title)	The commenter appears to be confused at what document is being amended and considered for approval. The commenter refers to the Functional Equivalent Document which was written to

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		<p>The PROPOSED amended policy deleted entire sections (in the Table of Contents -“December 2,2003 DRAFT”) without any discussion or strikeouts: Under the Structure of CWA SECTION 303 LIST: DELETED 2.2 TMDL’s COMPLETED CATEGORY DELETED: 2.3 ENFORCEABLE PROGRAM CATEGORY (p. 2) Under the CALIFORNIA LISTING FACTORS DELETED: 3.1 WATER QUALITY LIMITED SEGMENTS FACTORS DELETED 3.1.11 Alternate Data Evaluation, REPLACED with “3.11 SITUATION-SPECIFIC WEIGHT OF EVIDENCE LISTING FACTOR” DELETED 3.2 T MDL’s COMPLETED CATEGORY FACTORS DELETED 3.3 ENFORCEABLE PROGRAM CATEGORY FACTORS</p>	<p>comply with CEQA for the original Listing Policy which was adopted on September 30, 2004.</p>
9.3	Drew Fenton	<p>The 2004 policy appears to be 323 pages, the amended policy is 33 pages. EIR required.</p>	<p>See Response to Comment 9.2.</p> <p>The State Water Board’s regulations for implementing the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA) require the State Water Board to conduct environmental review of its certified exempt regulatory programs, which include state policies</p>

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			affecting water quality control. (23 Cal. Code Regs., § 3775, 3777.) The requirement to perform an environmental review is inapplicable, however, if the State Water Board “determines that the activity is not subject to CEQA.” (Ibid., § 3720, subd. (b).) A governmental agency’s discretionary action is subject to CEQA if it is approving a “project” as defined in section 21065 of the Public Resources Code. The State Water Board’s adoption of the Listing Policy Amendment is not a “project” subject to CEQA because such action has no potential to result in a “direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment.” (Pub. Res. Code § 21065.)
9.4	Drew Fenton	The purpose of the section 303(d) list is to provide information about water bodies relative to existing standards. Preparation of the list does not require States to reexamine whether those standards are appropriate. The proposal admits that it is reexamining standards (with changed standards) and is an attempt to revise water quality standards before or during the listing process. “this Policy provides guidance for interpreting data and information as they are compared to beneficial uses, existing numeric and narrative water quality objectives, and anti-degradation considerations.”	See Response to Comment 9.2.

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9.5	Drew Fenton	Water board states “The methodology to be used to develop the section 303(d) list is established by this Policy” -- is an amended policy (being proposed.) This is inappropriate.	See Response to Comment 9.0. Amending the Listing Policy based on the procedural lessons learned over the last 10 years is appropriate.
9.6	Drew Fenton	The process for examining and assessing water quality standards is distinct and by necessity separate from the section 303(d) listing process. The water boards approach combines the section 303(d) process with standards review and revision.	The Listing Policy and its proposed Amendment do not include standards review and revision as asserted by the commenter. The listing process assembles data and compares them to applicable narrative and numeric objectives to determine if impairment exists for a specific pollutant-waterbody combination.
9.7	Drew Fenton	The 2004 policy states that visual types of assessment can be used as a baseline for gross problem identification, or for tracking gross changes over time (like for trash/litter problems.) Visual assessments are debatable. The 2014 proposal changes to “Visual assessments or other semi-quantitative assessments shall also be considered as ancillary lines of evidence to support a section 303(d) listing.”	See Responses to Comments 9.0, and 9.2.
9.8	Drew Fenton	The proposed amended policy revises existing water quality standards (i.e., beneficial uses, water quality objectives, or the State's Non-degradation Policy) – is made without analysis or EIR. Is there an Environmental checklist for the effects the proposed changes that is expected to cause to areas that will be affected?	See Responses to Comments 9.0, 9.2, and 9.3.

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9.9	Drew Fenton	The proposed new policy revises changes the standard from requiring peer-reviewed literature to unknown standard regarding Sediment Quality Guidelines.	See Responses to Comments 2.0, 2.1, 2.2, 9.0, and 9.2.
9.10	Drew Fenton	The 2004 policy is changing the definitions of evidence to be available for assessing the entire program in place for over 10 years, Data will not be comparable, it may be lost. The new policy restricts information that will be used, is found in a single database, “CEDEN.” There is a conflict of interest because the state agencies operate the database, is the same agency that regulates their own errors, promotes corruption and distrust.	See Response to Comment 1.8. The State Water Board is tasked by the Clean Water Act section 303(d) to identify impaired waterbodies for the U.S. EPA. CEDEN is a public database that encourages the free sharing of data amongst government agencies, the public, the regulated community, and any other entity. The Regional and State Water Board submit the 303(d) List for public comment to allow for identification of any potential inadvertent errors or oversights. The process is designed to be as transparent to the public as possible.
9.11	Drew Fenton	California has been developing 303(d)/305(b) Integrated Reports every two years since 1976. A regional board is required to report current data on progress of its waters every two years, this process allows the Coast Central Board to not assess the disasters currently and continuing in Northern Santa Cruz headwaters to San Lorenzo River, entirely coated with sediment. It will allow another two years to flush away evidence that serious violations have occurred and are continuing. There are pools filled with 5 feet of	See Responses to Comments 1.0 and 1.2. Contrary to the comment, California has not submitted an integrated report every two years since 1976. With the submittal of more and more data the Water Boards have been completing revisions to the 303(d) list every 4 to 6 years. In addition, the proposed amendment allows for a continuous solicitation of data and allows Regions both on and off cycle to include priority listings and delistings which will allow for more current

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		sediment in several 6 feet pools at the Boy Scout Camp Lindblad that was allowed and issued timber harvest permit to log the inner gorges. The Regional Water Board has ZERO budget to run its Timber Harvest Program with a part time volunteer staff that is not trained. This destroyed our fisheries and quality of life.	data to be assessed and quicker inclusion of potential impairments. Most of these comments should be directed to the Central Coast Regional Water Board and are not within the scope of the Listing Policy Amendment.
9.12	Drew Fenton	It is disputed that “the Listing Policy was adopted prior to the development of sediment quality objectives.” This is not true.	See Response to Comment 9.0. The Sediment Quality Objectives Part 1 was adopted in 2009 nearly 5 years after the Listing Policy was originally adopted.
9.13	Drew Fenton	The notice does not give enough time for public review. I am on the mailing list for notices, and I received the email re proposed deletion of agency policy on DECEMBER 17, 2014 IS without adequate time for comment due Dec. 22.	The Notice the commenter is referencing is the Notice of Public Hearing at which the State Water Board will consider adopting the Listing Policy Amendment. The Notice of Opportunity for Public Comment, identifying opportunity for the public to provide written comment on the proposed Draft Listing Policy Amendment was sent to the Lyris Lists on November 20, 2014 with a revised Notice sent out on November 21, 2014.
10.0	Heal the Ocean	We do not support the proposed second change in the Listing Policy Amendment that would "clarify" that assessments are not required from all regions in each listing cycle. If regions are allowed to opt out of full assessment within any listing cycle it will compromise the integrity of the 303(d) listing process. It is critical that water	See Responses to Comments 1.0 and 1.1. Regions would not be allowed to “opt out” of a listing cycle. The amendment allows for the state to be partitioned allowing for a more consistent and relevant 303(d) list to be available every two years. In addition, the use of CEDEN as the

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		<p>body impairment is regularly identified across the State. The 303(d) List is in fact the core work of the State Water Board and the Regional Water Boards, and its regular update—in full—cannot be omitted by any Regional Board in any listing cycle. The spinoff of such omission is considerable: Attachment 2 of AB 885 (septic system regulations for California) is based on the 303(d) List. The 303(d) List is the primary basis for State Board funding of problem areas, and with considerable State funding around the corner with the passage of Proposition 1, it is inconceivable that a 303(d) List wouldn’t be as complete as possible. The 303(d) List ensures that help is directed where it’s needed most.</p>	<p>primary data depository will allow for a continuous solicitation of data and allow for Regions that are “off-cycle” to include priority listings and delistings. State Water Board does not foresee that the proposed amendment will have a negative impact related to funding projects to address high priority impairments. Conversely, the amendment could provide a better picture of water quality that allows for a more accurate prioritization of problems.</p>
10.1	Heal the Ocean	<p>Likewise, Heal the Ocean strongly opposes the proposed fourth change, and any change to the public review process that could empower a State Water Board Executive Director over adequate Board/public review. While we understand that there would still be a public comment process under the proposed changes, it is crucial to have adequate review and approval by the State Water Board itself. These decision makers are appointed by the Governor specifically for oversight and public review. Any steps that would reduce the Board’s oversight in this process would further remove the public from its ability to input on the</p>	<p>See Responses to Comments 1.4, 1.5, and 1.6.</p>

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		formation of the 303(d) List. The State Water Board cannot prioritize efficiency above public accountability on a matter as important as determining the list of impaired water bodies across California.	
10.2	Heal the Ocean	We are very concerned that the State Water Board is proposing these changes – and cannot help but wonder if these proposed changes are due to budgetary constraints at both State and Regional Board levels? If this is the case, a budgetary review is in order. If these changes are in fact due to budgetary constraints then this problem should be clearly stated and circulated so that the public and lawmakers understand that the State and Regional Water Boards are not provided with adequate funding to conduct their basic responsibilities in protecting California's water bodies. Heal the Ocean believes that #1 and #3 are reasonable changes to the listing process, but the other proposed changes would be serious errors that we would be forced to contest.	The proposed changes are not due to budgetary constraints at the State and Regional Boards. Except for the revision regarding adopted sediment quality objectives, the proposed amendment is an outgrowth from ten years of experience with the Listing Policy and the identification of procedural inefficiencies. The second and fourth changes identified in the Notice of Opportunity for Public Comment are consistent with strategies utilized by other States.
11.0	Las Virgenes-Triunfo Joint Powers Authority	We cannot support staff's proposal to delegate the state's approval of future 303(d) lists to the State Water Resources Control Board Executive Officer. Rationale: Under the proposed amendment, the SWRCB Executive Officer would have	See Responses to Comments 1.4, 1.5 and 1.6.

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		<p>discretionary authority to approve future updates to the 303(d) list and directly submit the revised list to the EPA for final adoption. If exercised, this procedural change would circumvent the existing approval process, which culminates with a vote of concurrence by the SWRCB in a publicly-noticed hearing before the SWRCB prior to the submission of the updated list to the EPA.</p> <p>We strongly believe such discretionary authority is contrary to the checks and balances specifically provided by SWRCB review and approval, especially for a document with such far-reaching regulatory consequences. Short of the courts, a SWRCB hearing is the venue of last resort for citizens and public agencies alike to have their views heard before board members specifically appointed to represent stakeholders directly affected by proposed water quality regulations that would be developed for 303 (d) listed water bodies. We ask that this language be deleted from the proposed Listing Policy amendments.</p>	
11.1	Las Virgenes-Triunfo Joint Powers Authority	We are concerned with the proposal to limit the definition of "readily available information" to information submitted to the California Environmental Data Exchange Network (CEDEN). Specifically, under the proposed amendment it is unclear whether data submitted to	If NPDES permittees are currently submitting receiving water data to CIWQS that data will be automatically uploaded into CEDEN. This enhancement is currently being added to CEDEN. It has not been determined how often the upload from CIWQS to CEDEN would occur but it

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		<p>the state in compliance with NPDES permit monitoring and reporting requirements would be automatically uploaded to the CEDEN system.</p> <p>We ask that the proposed amendment be revised to include data submitted to the state under the NPDES program as "readily available information," rather than adding to the administrative burden of NPDES permittees (and creating potential confusion) by requiring separate submissions of these data to two state-administered systems (i.e. NPDES and CEDEN).</p> <p>Alternatively, if the Board wishes to adopt the proposed amendment's language on this issue without revision, we ask that it instruct its staff to include CEDEN system uploads of NPDES water quality monitoring data on at least an annual (and preferably quarterly) basis, to ensure that these data are readily available for future 303(d) listing cycles.</p>	<p>would occur at regular intervals and at a minimum would occur prior to any given solicitation deadline.</p>
11.2	Las Virgenes-Triunfo Joint Powers Authority	<p>In our review of the state's 303(d) listing policy, we also noticed a logical inconsistency in Section 3.2 of the policy, which provides listing guidance for numeric water quality objectives. This section contains the following statement:</p> <p>"For depressed dissolved oxygen, if</p>	<p>These comments are outside the scope of the proposed Listing Policy Amendment. However, the State Water Board expects to consider additional amendments to the Listing Policy in the future.</p> <p>The specificity of this section regarding dissolved</p>

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		<p>measurements of dissolved oxygen taken over the day (diel) show low concentrations in the morning and sufficient concentrations in the afternoon, then it shall be assumed that nutrients are responsible for the observed dissolved oxygen concentrations if riparian cover, substrate composition or other pertinent factors can be ruled out as controlling dissolved oxygen fluctuations."</p> <p>While we understand no changes to this language are proposed in the amendments to the state Listing Policy, we wish to point-out that that this statement would be equally true of any factor resulting in the specified conditions. As guidance on methods, this is simply a restatement of the process of elimination. Our concern is with the policy's arbitrary focus on nutrients as the one factor that warrants and actually authorizes a degree of assumption under these conditions. Accordingly, we ask the state to consider either generalizing the statement by substituting "nutrients" with "one factor" in the above statement, or simply delete the sentence.</p>	<p>oxygen is due to the unique nature of dissolved oxygen as it related to the diel cycle. Other non-nutrient related pollutants are rarely collected continuously throughout the day.</p>
12.0	McAdams lands LP	<p>Modifying the definition for “readily available information” to mean ALL information submitted to CEDEN, [whether or the data subset can] be submitted through CEDEN” would raise costs to landowners, as RPFs repackage existing data for</p>	<p>See Responses to Comments 1.8 and 1.9.</p> <p>CalFire does not have specific submittal requirements for water quality but they are participating in the overall initiative to bring</p>

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		<p>CEDEN format, and meet submittal requirements for data subsets not submittable through CEDEN. State agencies already require duplicative efforts to meet each agency’s submittal requirements; landowners need inter-agency coordination of submittal requirements, not yet another unique set of submittal requirements.</p> <p>At the very least, your agency might use the submittal requirements of CalFire, the lead agency under the Forest Practice Act rules.</p>	<p>statewide consistency across state programs.</p> <p>The requirements of Section 6.1.2 state that data be submitted using SWAMP format which is CEDEN compatible. The templates provided by CEDEN are designed to be user friendly and allow for data collected and stored with a simple spreadsheet program and converted to CEDEN format.</p> <p>CEDEN is designed to be the open access inter-agency coordination the commenter is calling for, it is the link between the community data, monitoring data, permit driven data and any other data submitted. The use of CEDEN will aid in transparency and consistency and allow for the better use of the data that is collected.</p>
12.1	McAdams lands LP	<p>The amendment that would add State Water Board discretion to administer a Regional Water Board’s assessment, evaluation, and listing recommendation process and approval on behalf of a region, is harmful in a different way. Your own notice text says it best: “it is the regional staff [who has] knowledge of local waterbodies and Basin Plan objectives” (Notice, page 2). State Board discretion to administer, would lessen the chances that the staff specialists. Staff within regional offices have the most familiarity with a</p>	<p>It’s the expectation of the State Water Board that the proposed amendment to Section 6.2 would be exercised as a last resort and as necessary to complete the listing cycle. The State Water Board encourages the Regional Water Board development of region specific 303(d) lists and assessments.</p>

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		given situation (and hopefully have received local input from ‘knowledgeable persons’ who have ‘ground-truthing’ and/or specific scientific/factual information to offer in solving issues): they can add to the nuanced quality of a given decision.	
12.2	McAdams lands LP	I would caution that the amendment’s focus on promoting efficiencies in solicitation, assessment, and compilation of data may compromise or weaken forest landowners’ privacy and open them to unauthorized users such as marijuana growers who would and do use publicly available data to locate recently harvested lands upon which they then place stealth gardens. This is already happening.	Comment noted. The Water Boards are aware of issues involving marijuana cultivation and have convened a task force led by the Office of Enforcement. The task force is working cooperatively with other agencies to address water quality issues associated with marijuana cultivation.
12.3	McAdams lands LP	The focus on “streamlining the public participation and review process” would be detrimental to the regulated public, as well as to the government’s ability to hear and value what stakeholders need to have understood about proposed actions. Modern public hearings now typically use “facilitated discussion” by which verbal comments of individuals are aggregated and then distilled into a few key points. This strongly dilutes “ground-truthed” information, life-experience-based knowledge, and even scientific alternate viewpoints which individuals at public hearings present. Public hearings also typically	See Responses to Comments 1.4, 1.5, and 1.6. The public has many opportunities to provide feedback on the 303(d) List development. The first is at the Regional Water Board level which often has publicly noticed workshops in addition to public meetings when controversial topics are being addressed. This allows for thorough written and verbal correspondence. The second opportunity is at the State Water Board. Regardless of whether the State Water Board or the Executive Officer approve the statewide 303(d) list, the public still has an opportunity to submit written comments related to Regional

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		limit speaking time of attendees. As the Notice states, “oral presentations may be time-limited” (page 3). Further streamlining public participation would make the compression of the publics’ voices worse than it now is. Ideally, efficiency needs and democratic participatory needs can be balanced; both are important.	Water Board decisions. Finally the public can comment directly to the U.S. EPA Region 9 who has final approval authority over the 303(d) List. The State Water Board has made this process transparent and open to consistent public participation.
13.0	O’Laughlin & Paris LLP for the San Joaquin Tributaries Authority	Listing impaired waterbodies on the 303(d) list involves the consideration of complicated issues that have significant regulatory implications for the stakeholders on newly listed waters. These issues are very likely to be insufficiently addressed within the proposed one-sided opportunity for comment. The appropriate method is an open and robust public process through a Board workshop. The proposed change to reduce public engagement is troubling; the SJTA requests the State Water Board not approve this constraint and not adopt the Proposed Policy with regard to altering the level of meaningful public input.	See Responses to Comments 1.4, 1.5, and 1.6.
13.1	O’Laughlin & Paris LLP for the San Joaquin Tributaries Authority	By delegating the authority to the Executive Director, the public will no longer be made aware of the impending adoption with a calendar notice, nor will the public have the additional opportunity to comment on the proposed adoption. Before adopting the list, the State Water Board should promote a robust and public process and the Board itself must remain the decision-making	See Responses to Comments 1.4, 1.5, and 1.6. Even if the Executive Director should take up approval of the statewide 303(d) List, the public would still be given the opportunity to comment consistent with the proposed amendment language.

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		entity.	
14.0	Partnership for Sound Science in Environmental Policy	<p>Only the Regional Board may elect to administer the listing process for one or more water segments if that region is “off-cycle,” and there seems no outward or obvious ability for members of the public to affect that decision. This is potentially a significant issue for dischargers who are complying with NPDES permit requirements that are based on TMDLs for water segments that may qualify for de-listing under the TMDL Listing Policy.</p> <p>PSSEP urges the State Water Board to direct staff to provide opportunities for the public to seek off-cycle water segment listing changes.</p>	<p>See Responses to Comments 1.0. and 1.1.</p> <p>Interested Parties should coordinate with the Regional Water Boards during the assessment processes.</p> <p>On-cycle Regions would be assessing all the information submitted for their particular region. Off-cycle Regions will be given discretion to determine if high priority listings or delistings should be included in any given Listing Cycle. The public may request their Regional Water Board to consider what priority waters should be considered off-cycle. If the Regional Water Board fails to provide an adequate response to such request, the public could request the State Water Board to consider a failure to act under section 13248 of the California Water Code.</p> <p>Any listing decisions on or off-cycle will be accompanied by the requisite fact sheets and submitted for public review prior to approval.</p>
14.1	Partnership for Sound Science in Environmental Policy	<p>With all due respect to State Water Board staff, we believe this proposed change is ill-conceived, and does not achieve the stated goals of the State Water Board when it adopted the TMDL Listing</p>	<p>See Responses to Comments 1.4, 1.5, and 1.6.</p> <p>The public process has not been decreased by the proposed amendment. The language related to</p>

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		<p>Policy to provide a “a transparent public participation process” for TMDL listing decisions. (SWRCB Functional Equivalent Document: Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List, September 2004, at page 5.)</p> <p>Currently, all Regional Board-proposed Listing changes automatically go to the State Water Board for its review, public notice and comment, and final Board approval. This has, at least theoretically, provided interested parties with “two” opportunities to address a proposed new, revised, or de-Listing. Under the proposed amendment, review at the State Water Board level would be “waived” unless an interested party made a timely request for State Board review.</p> <p>We urge the State Water Board to preserve this vital public right.</p>	<p>interested parties needing to timely request State Water Board review is in the current Listing Policy and has not been changed. Rather the language was moved to from Section 6.3 to 6.2 and clarified. The current Listing Policy Section 6.3 states</p> <p>“Requests for review of specific listing decisions must be submitted to the SWRCB within 30 days of the RWQCB’s decision. The SWRCB shall consider changes only to waters that are requested for review unless the SWRCB, on its own motion, decides to consider recommendations on other waters.”</p>
14.2	Partnership for Sound Science in Environmental Policy	PSSEP questions whether proposed delegation of the authority to its Executive Director to approve the final statewide Section 303(d) list is permissible under state law. Water Code Section 13147 provides that, “The <i>state board</i> shall not adopt state policy for water quality control” unless certain conditions are first met. There is no mention of any delegated authority to the Executive Director under Section	The approval of the California Integrated Report / Section 303(d) List is not a “state policy for water quality control” and therefore the Executive Director’s approval of the Section 303(d) List is not subject to the prohibition of delegation under Water Code section 13147. The U.S. EPA has final approval authority over the 303(d) List.

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		13147. Thus, the only question is whether approval of the final, statewide Section 303(d) List qualifies as a “state policy for water quality control.” Given that the 303(d) List is compiled and submitted to US EPA biennially as part of its Clean Water Act Section 305(b) Report, it would certainly seem to qualify as part of state policy for water quality control.	By comparison, the Listing Policy itself is a policy for water quality control which the State Water Board will consider amending.
14.3	Partnership for Sound Science in Environmental Policy	We respectfully request that the State Water Board reject the proposed changes to the process leading up to final approval of the statewide 303(d) list which would enable final approval to be carried out by the Executive Director and without any opportunity to appeal such decisions to the State Water Board itself.	See Responses to Comments 1.4, 1.5, and 1.6. Interested parties can also comment directly to U.S. EPA who has final approval of the 303(d) List.
15.0	Port of Long Beach and Port of Los Angeles	A water segment should not be listed for sediment toxicity alone when the Sediment Quality Objectives apply. The use of sediment toxicity alone is scientifically unsupported to determine sediment quality and this is stated clearly in the Sediment Quality Objectives Part 1 adopted by the State Water Board.	Federal requirements and the Listing Policy require the water boards to consider all “readily available data and information”. If sediment toxicity data is the only data available for a given waterbody and the data indicates significantly significant toxicity, then it is appropriate to list that waterbody as impaired under Section 3.6 of the Listing Policy. However, if there is enough data to perform the multiple lines of evidence analysis detailed in the SQO Part 1, then that methodology should be applied (see Response to Comments 2.0 and 2.1.). The State Water Board encourages parties to collect and submit the data

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			necessary to perform the triad analysis in order to assess waters using the SQOs.
15.1	Port of Long Beach and Port of Los Angeles	<p>The use of binomial distribution for exceedance determinations in the Listing Policy might be applicable to traditional water column measurements but is not appropriate to determine exceedance of sediment-based criteria or objectives. Further, the use of the binomial distribution for listing and delisting decisions should only be applied to numeric water quality objectives, criteria, or standards, and it is not appropriate for narrative objectives such as the Sediment Quality Objectives. The Ports recommend that the assessment of sediment-based criteria or objectives be determined through an area-based assessment approach.</p> <p>The Sediment Quality Objectives Part 1 should also be amended to remove the use of the binomial distribution for the exceedance determination and to incorporate an area-based assessment approach to assess an exceedance of the narrative Sediment Quality Objectives.</p> <p>The Ports recommend that the State Water Board address these comments by removing the use of the binomial distribution for sediment criteria or objective exceedance determination in listing and</p>	<p>See Response to Comment 2.0.</p> <p>This comment is beyond the scope of the proposed amendment to the Listing Policy. In the event stakeholders believe that no other delisting factors including the use of the binomial distribution, will result in a delisting, they can request the use of Section 4.11 and the weight of evidence approach to justify a delisting decision. However, at this time no data that would meet the requirements of the SQO have been submitted for assessment and a potential delisting or listing decision.</p>

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		delisting and replacing it with an area-based assessment approach	
15.2	Port of Long Beach and Port of Los Angeles	<p>When a water segment does not meet the Sediment Quality Objectives, additional confirmatory assessments or stressor identification studies should be allowed under the Regional Water Board's discretion prior to the water segment being listed. This approach is supported in Section VII.F of the Sediment Quality Objectives Part 1, which states that when a water segment does not meet Sediment Quality Objectives, a confirmatory assessment or stressor identification studies should be allowed before the water segment is listed.</p> <p>The Ports recommend that the State Water Board address these comments by providing language that allows a confirmatory assessment or stressor identification studies under the Regional Water Board's discretion prior to listing</p>	See Response to Comments 2.0, 2.1, and 2.2. Adding this clarifying language is not necessary. The SQOs Part 1 and the methods contained therein are incorporated into the proposed amendment by reference.
15.3	Port of Long Beach and Port of Los Angeles	<p>The Listing Policy should provide a mechanism to incorporate future revisions and development of the Sediment Quality Objectives.</p> <p>The Ports recommend that the State Water Board address these comments by providing language that allows future revisions and development in the Sediment Quality Objectives Part 1 to be</p>	See Response to Comment 2.0. By leaving the amendment to Section 6.1.3 part 1A sufficiently broad, "If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective," it allows for incorporation of revisions and additions to the SQOs.

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		upheld in the Listing Policy	
15.4	Port of Long Beach and Port of Los Angeles	The Listing Policy should incorporate a delisting provision in Section VII.E.8.3 of the Sediment Quality Objectives Part 1 for a water segment listed for water/sediment toxicity.	See Responses to Comments 2.0 and 2.1.
15.5	Port of Long Beach and Port of Los Angeles	Use of 90 percent minimum significant difference is not appropriate to determine whether or not a sediment sample is toxic to benthic organisms. Instead, a statistically based assessment approach should be used to determine toxic response, where a given sample toxicity is compared to toxicity of a reference sediment sample with similar physical characteristics.	This comment is beyond the scope of the proposed amendment to the Listing Policy.
15.6	Port of Long Beach and Port of Los Angeles	The Ports recommend that the State Water Board address these comments by providing clarification in the Listing Policy that a water segment should not be listed for sediment toxicity alone but should be determined using multiple lines of evidence as specified in the Sediment Quality Objectives Part 1 and when the Sediment Quality Objectives are not applicable, any line of evidence available (e.g., either sediment chemistry or benthic community) other than sediment toxicity should be also considered for the listing/delisting determination	See Response to Comment 2.2. The use of other lines of evidence related to sediment chemistry, degradation of benthic communities etc. is not precluded by the proposed amendment. The Listing Policy already allows for the use of other lines of evidence related to sediment impairments utilizing Sections 3.6, 3.9, 3.11. 4.6, 4.9, and 4.11.

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15.7	Port of Long Beach and Port of Los Angeles	The Ports recommend that the State Water Board address these comments by providing language that directs the Sediment Quality Objective listing and delisting process to the Sediment Quality Objectives Part 1.	See Responses to Comments 2.0, 2.1 and 2.2.
16.0	Quartz Valley Indian Reservation	We respectfully request that the Listing Policy’s proposal to require submission of data through CEDEN be delayed until CEDEN is able to harvest data from WQX/STORET. Alternatively, NVIS and WQX/STORET could be included in the definition of “readily available information.”	See Response to Comment 1.8. While the connection between CEDEN and the federal databased WQX/STORET is a goal, it likely will not be completed until 2017. In the meantime tribes have the ability to submit data into CEDEN with the aid of the Regional Data Centers and future tools being developed by the CEDEN program managers. The addition of NVIS and WQX/STORET into the definition of readily available information would result in redundancy and defeat one purpose of the proposed amendment which is to standardize the data formats to allow for more efficient assessments.
16.1	Quartz Valley Indian Reservation	We urge the State and Regional Boards to prioritize adding these essential features (exchanging data with NWIS and WQX/STORET, and the ability to store continuous data) to the CEDEN system.	See Response to Comment 1.8. This is a priority for the State Water Board. The Office of Information Management and Division of Information Technology are currently working with a grant from U.S. EPA to get the exchange in place.
16.2	Quartz Valley Indian Reservation	Any impairment with the ability to impact human health should be considered for listing outside of	See Responses to Comments 1.0 and 1.1.

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		<p>the regular listing cycles. Waiting years to submit data that’s indicating harmful impairments to human health; and then wait years for the TMDL and its implementation is just not proactive or protective of people. We would like to see additional flexibility regarding public health threat impairments included in the Listing Policy, specifically:</p> <ol style="list-style-type: none"> 1. Open data submission for listing recommendation of public health impairments. 2. Firm timelines requiring a quicker completion of the public health threat impairment listing, TMDL development and implementation. 3. Priority given for completion over existing TMDL’s being developed. 	<p>The State Water Board concurs that impairments that can affect human health are a high priority. The amendments allow for data related to high priority to be submitted continuously and assessed “off cycle” at the discretion of the Regional Boards.</p>
17.0	Sacramento Regional County of Sanitation District	<p>Amendment to 6.1.1: Our recommendation is to add CEDEN to the existing list of “readily available information” in the Section 6.1.1, and only take out data sources that may cause duplication with CEDEN data.</p>	<p>The proposed amendment to require the use of CEDEN allows for a consistent format and centralized clearing house for the data to be used for assessment purposes and many other water quality related projects. Simply adding CEDEN to the current list under section 6.1.1 would not accomplish these results.</p>
17.1	Sacramento Regional County of Sanitation District	<p>Amendment to 6.1.2.1: We recommend that the State Water Board consider including a mechanism in the proposed amendment that allows stakeholders the ability to request consideration of listing/de-listing changes during off-cycles.</p>	<p>See Response to Comment 14.0.</p>

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17.2	Sacramento Regional County of Sanitation District	Amendment to 6.3: Converting the existing public, formal process into an administrative approval wholly delegated to the Executive Director eliminates an important step in the process and reduces overall transparency. Regional San recommends maintaining the existing process for State Water Board review of listing recommendations.	See Responses to Comments 1.4, 1.5, and 1.6.
18.0	Southern California Alliance of POTW’s	There appears to be no remedy for the circumstance where a stakeholder encounters difficulty in uploading pertinent information into CEDEN, which opens up the possibility that information could be excluded at the discretion of the State and Regional Boards. SCAP suggests that at the very least, the proposed amendments include a mechanism for stakeholders to submit relevant data that may not be able to be uploaded into CEDEN.	See Responses to Comments 1.8 and 1.9.
18.1	Southern California Alliance of POTW’s	Delegation of Authority to Executive Director: Under the proposed amendments, the Executive Director would be authorized to finalize any 303(d) listing recommendations and hold public comment and public hearings without State Board involvement and without a final State Board vote. Delegating such authority to the Executive Director removes an important level of checks and balances. At a minimum, the State Board should	See Responses to Comments 1.4, 1.5, and 1.6. Interested parties can also comment directly to U.S. EPA who has final approval of the 303(d) List.

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		include a provision allowing an interested party to request State Board review of the Executive Director's decision.	
19.0	Western States Petroleum Association	Do not delegate authority for discretionary approval to the Executive Director for finalizing the proposed 303(d) List. The current process for public notice and Board hearing for formal approval maintains an open process that our members wish to preserve. In the event that staff believes future changes to the 303(d) list are non-contentious, the Board can agendaize the issue on the consent calendar.	See Responses to Comments 1.4, 1.5, and 1.6.
19.1	Western States Petroleum Association	While the Revised Notice of Opportunity to Comment (NOC) limits the information to that which has been submitted and accepted by the CEDEN and presumably meets the requirements of Section 6.1.4, it allows staff to make their own determinations about data quality & acceptability and supersedes the review conducted by the regional boards. In order to maintain partiality in its own review of the recommendations by the Regional boards, we believe State Water Board staff should not be making determinations about data acceptability.	The use of CEDEN allows for a consistent format and centralized clearing house for the data to be used for assessment purposes and many other water quality related projects. While CEDEN does require certain information to be included with data it is not a tool that determines acceptability under Section 6.1.4 of the Listing Policy. That determination will still be made by Regional and State Water Board staff. CEDEN will mainly aid in transparency and consistency related to the development of lines of evidence and decision recommendations.
19.2	Western States Petroleum Association	6.1.1 of the amended policy strikes out various types of data and information that are considered readily available. We request this amendment be removed.	See Responses to Comments 1.4, 1.5, and 1.6. In most cases the information described in Section 6.1.1 will already be present in CEDEN, rendering

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		The listing of applicable documents, data, and information should be retained in the policy to ensure completeness of review. Perhaps not all types of data and information are relevant to each water body, but for each item, the Regional Board should provide the item or explain why it is not relevant or has not been provided.	section 6.1.1 redundant. Additionally, such information is described in the notice of solicitation.
19.3	Western States Petroleum Association	6.2 and 6.1.2.1 could result in short-circuiting the public process. The current process has two review steps, one each by the regional board and then by the State Water Board. The proposed amendment would foreshortened the process, remove a check on the system, and allow staff to over-ride the responsibility of a regional board. Combined with the relaxed standards for the submittal of data and information, the foreshortened process could circumvent important stakeholder input. We would request this amendment be removed.	See Responses to Comments 1.4 and 1.5. The State Water Board disagrees with this assertion. Both State Water Board and Regional Water Board staff work together in developing the 303(d) List and utilizing the Listing Policy. Staff meets every other month at a roundtable to discuss the assessments and raise questions and concerns. The State Water Board does not foresee the need to administer a Regional Water Board process in the future but it has been determined that removing the current procedural requirements of Section 6.2 and allowing flexibility is necessary. It is preferred to have the Regional Water Board's administer its own process.
19.4	Western States Petroleum Association	There should be documentation required from the regional board stating that it will not be able to meet its obligations under 303(d) and requesting that the State board take over its function for the current listing cycle, and only for that listing cycle.	Comment noted. Written communication would occur between the State Water Board and Regional Water Board in the rare case that the State Water Board would administer the listing process under Section 6.2.

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20.0	Gary Hess	<p>My view is that identifying the waters for which a TMDL is required could be done more accurately and cheaply using a process that is more consistent with the general principles of administrative law applicable to informal adjudications, than by the process called for by the proposed policy. I recommend that the State Board further amend the policy to allow it to better answer that question (i.e., “Is there a better alternative?”) over time.</p> <p>I recommend that the policy be amended in two respects. The first would encourage the Regional Boards and State Board staff to identify cases where it is believed that strict application of the policy will lead to the omission of a water meeting the criteria in 40 CFR 130.7, from the state’s list. The second would explicitly indicate that the State Board, or its delegate, is authorized to list the water as requiring a TMDL if it agrees.</p>	<p>This comment is beyond the scope of the proposed amendment to the Listing Policy. The comments are currently addressed in the current policy under Section 3.11 Situation Specific Weight of Evidence Listing Factor.</p>
20.1	Gary Hess	<p>Information policies and requirements have the capacity to further or to frustrate the protection of human health and the environment as implemented by environmental regulation.”); Cranor C, The legal failure to prevent subclinical developmental toxicity, Basic & Clinical Pharmacology & Toxicology 102(2):267-273 (2008) (“More generally, in setting public policies</p>	<p>This comment is beyond the scope of the proposed amendment to the Listing Policy. Setting a policy to implement a science based program requires the use of science based guidance. However, science does not always provide a clear picture and allows for the use of a weight of evidence approach to indicated impairments or attainments of water quality</p>

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		we need to recognize that science cannot provide all the answers even in science-intensive areas for policy purposes. By recognizing this, we can avoid a kind of ‘science trap’, where opponents of providing greater health protections try to persuade the appropriate governmental authorities that exquisitely detailed science is needed to justify each step of protective regulations.”)	standards.
20.2	Gary Hess	I am writing to encourage the State Board and staff to: determine that the existing policy constrains the State Board’s and Regional Boards’ discretion in ways that impair the State’s ability to identify waters for which a TMDL is needed; determine that the proposed amendment would continue to do so; and further amend the policy to address constraints on the State’s discretion where they are unhelpful.	The commenter has not indicated how the Listing Policy constrains the Water Boards ability to assess listings and appears to be beyond the scope of the proposed Listing Policy Amendment.
20.3	Gary Hess	There is an additional benefit to encouraging the Regional Boards and State staff to identify alternative methods that may depart from the policy in some respect, but which are thought to be sufficient to support a determination that a TMDL is needed. Add new paragraph to section 6.3 to state: “Notwithstanding other provisions of this policy, the State Board or its delegate may determine that	See Response to Comment 20.0.

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		a TMDL is required for a water if the State Board or delegate finds that: there is good cause to do so; and a description of the methodology used to make that determination that complies with 40 CFR 130.7(b)(6)(i) has been prepared.”	
20.4	Gary Hess	Add new paragraph to section 3.11 to state: “When developing the list of waters for which a TMDL is required, the Regional Boards and the State Water Board staff are encouraged (with public participation, to the extent appropriate) to: identify cases where they believe that application of a provision of the policy would result in the omission from that list of a water for which a TMDL is required using the criteria in 40 CFR 130.7; and, in those cases, to describe the methodology that is believed to support a determination that a TMDL is required.”	This comment is beyond the scope of the proposed amendment to the Listing Policy. The language proposed by the commenter is not necessary to successful implementation of Section 3.11.
21.0	Joyce Dillard	6.1.1 Definition of Readily Available Data and Information: [CEDEN] removes that aspect of seasons, safety and protection has hard data cannot reason and distinguish those aspects that make water living. We do not agree that prior definition and listing of sources should be removed. An interested party, including the public, is omitted. Needed is current	See Responses to Comments 1.0, 1.1, and 1.8. The State Water Board disagrees with the commenters assertions that CEDEN removes the representative information from the data. CEDEN in fact requires the inclusion of this information as part of the submittal process. In addition the public is not omitted from the process by using CEDEN. CEDEN is a public repository for data that encourages public participation and

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		<p>information relative to conditions, not data driven to a point of not being applicable.</p> <p>This process must equate to a living document which is an aspect of adaptive management.</p>	<p>transparency. The 303(d) listing process is driven by data and the application of numeric and narrative water quality objectives, however Sections 3.11 and 4.11 allow for other information beyond hard data to create a weight of evidence indicating impairment or attainment of water quality standards.</p>
21.1	Joyce Dillard	<p>6.1.2 Administration of the Listing Process:</p> <p>We disagree that the Listing Cycle should be determined by the State Water Board because not all regions are equal in the amount and condition variability. There are not enough regulations to be representative to the intensity of TMDL such as reflected in the Los Angeles Regional Water Quality Control Board. Complicated in this issue is the inclusion of the 35 TMDLs in the LAMS4 permit (R4-2012-0175). That iterative process is important and necessary as BMPs are applied to meet TMDL compliance. (Maximum Extent Possible) MEP should continually adapt to current conditions and BMP effectiveness (FR Doc No: 2014-13593).</p> <p>AB 2403 Local government: assessments, fees, and charges has changed the State definition of water to: SEC. 2. Section 53750 of the Government Code is</p>	<p>See Responses to Comments 1.0 and 1.1.</p> <p>This comment is beyond the scope of the proposed amendment to the Listing Policy.</p>

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		<p>amended to read: 53750. For purposes of Article XIII C and Article XIII D of the California Constitution and this article: (m) “Water” means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.</p>	
21.2	Joyce Dillard	<p>6.2 Approval of the Regional Water Board’s List:</p> <p>We disagree with “at its election” for a Listing Cycle. LA Regional Water Quality has listed 27 TMDLs and 8 USEPA TMDLs for a total of 35. There are major differences in categorization, and consequently this questions as to the data available for terms not used by the EPA. These categories should be included in the every Listing Cycle. It is more important for Listing Cycles to be analyzed by category and cause than by Water Board. The purpose is to attempt to achieve water quality based on environmental effect.</p>	<p>See Response to Comment 12.1.</p> <p>This comment is primarily beyond the scope of the proposed amendment to the Listing Policy.</p>
21.3	Joyce Dillard	<p>6.3 Approval of Statewide List:</p> <p>State Water Board should release for Public Review and Comment all Regional Water Boards specific recommendations. State Water Board Executive Director should not have the sole authority to approve the</p>	<p>See Response to Comment 1.4.</p> <p>The Regional Water Boards release the specific recommendations to the public as required by Section 6.2 of the Listing Policy. If the Executive Director did exercise the proposed delegated authority to approve the 303(d) List, the Executive</p>

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		list. State Water Board should be the authority for approval, especially if the TMDLs are consequential to NPDES permitting such as the LA MS4 permit.	Director’s proposed action would be publicly noticed for comment as required under Section 6.3. The State Water Board along with U.S. EPA has approval authority over TMDLs.
21.4	Joyce Dillard	Definition of LISTING CYCLE: Two-year cycle appears to be appropriate, but TMDLs should not be neglected and left to stand over years and years without review and applicability. Though it may incur a workload, it is important to translate water quality needs into land uses needs and be used for antidegradation in real-time planning. We suggest you add the TMDL information to Cal-Adapt.	Comment noted. This comment is beyond the scope of the proposed amendment to the Listing Policy.
22.0	Sacramento Stormwater Quality Partnership	While we understand the resource constraints and need to optimize efforts, there should be a specific process for others to initiate a listing change. In some cases adequate evidence is available to delist a segment that may have time sensitive impacts on municipal agencies, including permit requirements or prohibitions. The SSQP requests the following language be included at the end of the cited Listing Policy revision (6.1.2.1 “Off Cycle” Evaluations): During both “on cycle” and “off cycle” periods the Regional and State Boards will consider specific requests from interested parties relevant to listing changes through the data solicitation	See Response to Comment 14.0.

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		process. The Water Boards shall document the listing findings in the listing fact sheets or in a separate public response.	
22.1	Sacramento Stormwater Quality Partnership	Section 4.1 Consideration of Site Specific Objectives and Conditions for Delisting: Delisting should consider numeric water quality objectives that are based on site specific conditions and not be limited to “maximum contaminant levels where applicable, or California/National Toxics Rule water quality criteria” (page 11). For example, USEPA criteria for metals include consideration of organic carbon and other factors that reduce the bioavailability of copper through the Biotic Ligand Model (BLM). Another example is the use of only acute water quality criteria when examining short-lived wet weather conditions. The SSQP requests the following revisions to Section 4.1: Numeric water quality objectives for toxic pollutants, including maximum contaminant levels where applicable, California/National Toxics Rule water quality criteria, and other site specific numeric objectives are not exceeded ...	This comment is beyond the scope of the proposed amendment to the Listing Policy.
22.2	Sacramento Stormwater Quality Partnership	The SSQP requests that a list of “readily available data” be preserved in this section and include the following: The following data submittals to the Regional	In most cases the information described in Section 6.1.1 will already be present in CEDEN, rendering section 6.1.1 redundant. Additionally, such information is described in the notice of solicitation. Furthermore, in most cases the

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		<p>Boards will be considered “readily available data” and a summary of the evaluation and use of the data will be provided (Section 6.1.1 and 6.1.4 definition of readily available data and data evaluation):</p> <ul style="list-style-type: none"> - Ambient monitoring data collected and/or reported as part of National Pollutant Discharge Elimination System (NPDES) permits or waste discharge requirements (WDRs) - Special studies performed to evaluate the protection of beneficial uses or site specific objectives - Ambient monitoring data from collaborative regional monitoring programs such as the San Francisco Regional Monitoring Program, the Delta Regional Monitoring Program, the Bight Regional Monitoring Program, and others. <p>We appreciate the historic efforts to consider all reasonable data sources and comprehensively document findings as it allows data submitters the opportunity to ensure the appropriate data were used and to provide more useful comments on proposed listing changes. The wide discretion the Water Boards have in the process may be necessary to evaluate large and diverse datasets,</p>	<p>information described in Section 6.1.1 and specified by the commenter will already be present in CEDEN via linkages between the SWAMP and CIWQS databases.</p>

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		but this detailed documentation is necessary to verify the proposed listing decisions.	
23.0	Stewards of the Sequoia	... The primary implementation mechanism for TMDL implementation is the state section 319 nonpoint source management program (BMP's). As the Forest's BMP's have been approved by the State in the aforementioned MAA, they become the primary mechanism for meeting water quality standards. Based on Forest monitoring BMP's are implemented and effective in mitigation of non-point source pollution and are therefore in compliance with applicable water quality standards. Most recent monitoring 2004-2008, found BMP's to be effective in 96% of the instances monitored.	This comment is beyond the scope of the proposed amendment to the Listing Policy.
23.1	Stewards of the Sequoia	The Sequoia National Forest respectfully challenges the listing of the following rivers on National Forest Lands as they are and remain unaffected by actions that could potentially affect the pH, DO, or toxicity: 1. Kern River, North Fork from the Forest boundary to its headwaters in the Sequoia National Park; 2. Lake Isabella, from Isabella Dam upstream to elevation 2605 feet above sea level; 3. Kern River, Lower, from Isabella Dam downstream to the Sequoia National Forest Boundary;	This comment is beyond the scope of the proposed amendment to the Listing Policy. These comments would be best directed to the Central Valley Regional Water Board during the next Listing Cycle.

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		<p>4. Deer Creek from the Forest boundary to its headwaters; and</p> <p>5. Hume Lake, from Hume Dam to the beginning of the lake approximately 5200 feet above sea level.</p>	
23.2	Stewards of the Sequoia	<p>The information provided by the Forest Service who manages Lake Isabella in their 3/13/2009 to the Regional Water Control Board and other agency documents, indicates that the DO, PH and other issues of concern your office has with Lake Isabella regarding 303d listing are naturally caused by wildfire and other natural processes. We hope the amended 303d listing policy will exclude naturally occurring processes from triggering 303d listing in future.</p>	<p>This comment is beyond the scope of the proposed amendment to the Listing Policy. Natural sources of impairment are addressed in the Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options. Page 3 of that Policy states “If the failure to attain standards is due to the fact that the applicable standards are not appropriate to natural conditions, an appropriate regulatory response is to correct the standards.” The Listing Policy identifies impairments based on the water quality data and the applicable water quality standards; it does not incorporate source analyses.</p>
24.0	California Association of Sanitation Agencies	<p>CASA supports incorporating the SQOs into the Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List. More specifically, we support the addition of language into “Section 6: Policy Implementation”, which directs Regional Water Boards to use the methods and procedures outlined in the SQOs. However, CASA believes the SQO language is essential not only to Policy Implementation, but to listing and de-listing as well. Therefore, we</p>	<p><u>Comment noted. See Response to Comment 2.0. Staff has added language to Section 6.1.3 that states “and any additional language for developing the section 303(d) List.” The development of the section 303(d) List includes both listing and delisting recommendations. This additional language addresses the commenters concerns without having to add additional language to Section 3 and Section 4.</u></p>

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		request the same language be inserted as specific factors in “Section 3: California Listing Factors” and “Section 4: California Delisting Factors” in order to ensure the SQOs are applied correctly as part of the Listing Policy.	
24.1	California Association of Sanitation Agencies	The proposed amendments modify the definition of “readily available information” to mean all information submitted to the California Environmental Data Exchange Network (CEDEN). If CEDEN cannot accept a particular subset of data, the proposed amendments state that the State and Regional Water Boards <i>may</i> accept the data and information if it meets the formatting and quality assurance requirements detailed in the notice of solicitation for the current listing cycle. (Proposed Listing Policy at Section 6.1.1) While we appreciate that submittal and maintenance of relevant information in a centralized database can help streamline the listing and de-listing process, the amendments are written in such a way that the State and Regional Water Boards appear to have the discretion whether or not to use any data that cannot be uploaded into CEDEN. A stakeholder could encounter a circumstance where valuable information important to a listing or de-listing decision cannot be uploaded into CEDEN, and the State or Regional Water Board can opt not to	<p><u>The sentence at issue in Section 6.1.1 states:</u></p> <p><u>“If CEDEN is unable to accept a particular subset of data and information, the State Water Board or the Regional Water Board may accept that data and information if it meets the formatting and quality assurance requirements detailed in section 6.1.4 of the Policy and the notice of solicitation for the current listing cycle.”</u></p> <p><u>Staff agrees that the word “may” in the preceding sentence could be interpreted that the Water Boards have discretion regarding what data and information is accepted even if it meets the requirements of section 6.1.4, solicitation notice, and the cannot be accepted into CEDEN due to the constraints of the database. In response to this comment, staff has changed the word “may” to “will” in the above-noted sentence. However, if staff determines that the data could have been accepted into CEDEN that data will be sent back to the submitter as not complying with the requirements of section 6.1.1 which could result</u></p>

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		accept that data for whatever reason. Therefore, CASA suggests that the proposed amendments state that the State and Regional Water Boards must accept the data as long as there is compelling justification as to why it cannot be uploaded to CEDEN and quality assurance requirements are met.	<u>in the data not being assessed as part of the current Listing Cycle.</u>
24.2	California Association of Sanitation Agencies	As a side note, the State Water Board requires National Pollutant Discharge Elimination System (NPDES) permittees to submit receiving water monitoring data to the California Integrated Water Quality System Project (CIWQS). In order to avoid duplicative efforts, CASA would like to emphasize the importance of the State Water Board developing and implementing a program that will automatically transfer NPDES monitoring data reported in CIWQS into CEDEN. Additionally, the State Water Board should migrate all data used for previous 303(d) listing evaluations into CEDEN in order to ensure consistent and holistic assessments in the future.	<p><u>Comment noted. The CEDEN program managers are actively working on enhancements to CEDEN that will allow for data submitted into CIWQS to be transferred into CEDEN. This may require the submittal requirements of CIWQS to be changed to better mirror what is required by CEDEN.</u></p> <p><u>The high quality data and information generated from internal Water Board programs like SWAMP are already in CEDEN. However, migrating all data from previous 303(d) listing evaluations would be nearly impossible especially with older data collected in hard copy formats or that has been archived.</u></p>
24.3	California Association of Sanitation Agencies	The proposed amendments specify that the 303(d) List is not required to include assessments from all regions for every listing cycle. Instead, at the beginning of each listing cycle, the State Water Board will identify which Regional Water Board(s) should make listing recommendations	<u>Comment noted. It is envisioned that the data solicitation will be continuous and performed every listing cycle beginning with the 2018 Listing Cycle. We need to allow a lag time from the approval of the proposed amendments to give submitters a chance to conform to CEDEN</u>

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		<p>for that cycle. (Proposed Listing Policy at Section 6.1.2.1) Currently, all nine Regional Water Boards assess waters in their jurisdiction every listing cycle. In general, CASA believes that providing the authority for Regional Water Boards to process 303(d) List changes on a rotating basis and not every single listing cycle is a positive change to the Listing Policy. Most of the straightforward listings have already been completed, and as such, it is inefficient and unnecessary for Regional Water Boards to conduct a formal listing process every single cycle. CASA requests, however, that the State Water Board solicit new data corresponding to each listing cycle, including the initial roll-out of the new listing cycles proposed in the California Integrated Report Update released in November 2013. The last data solicitation period was 2010, and thus by the third rotation of the proposed listing cycle, several years of new data will be available for analysis.</p>	<p><u>requirements as well as allow CEDEN program managers to get stakeholder input to improve CEDEN’s capabilities.</u></p>
24.4	California Association of Sanitation Agencies	<p>Our other main concern with this new approach is that water bodies for which dischargers are seeking to <i>de-list</i> a water body could be inhibited if the region in question is on an “off-cycle.” The proposed amendments do contain a provision whereby a Regional Water Board that is “off-cycle” may administer the process for one or more</p>	<p><u>A direct listing change from the previous Listing Cycle includes any new listing or delisting. The proposed amendment will not impede off-cycle delistings. Delistings and listings are encouraged for off-cycle regions.</u></p>

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		<p>water segments that would result in a direct listing change from the previous Listing Cycle.</p> <p>(Proposed Listing Policy at Section 6.1.2.1)</p> <p>However, there is no similar provision that might allow similar handling for a water body-specific de-listing proposal. Thus, we request that the Board consider including a mechanism in the Listing Policy for stakeholders to request consideration of listing changes off-cycle.</p>	
24.5	California Association of Sanitation Agencies	<p>The amendments would provide the State Water Board with the discretion to administer a Regional Water Board’s assessment, evaluation, and listing recommendation process and approval on behalf of that region. (Proposed Listing Policy at Section 6.2) It is our understanding that change is designed to enable State Water Board staff to process listing updates in those regions where staff resources are limited. In general, CASA supports this change as it will help streamline the overall listing and de-listing process.</p>	<u>Comment noted.</u>
24.6	California Association of Sanitation Agencies	<p>Language was added to the Listing Policy to explain the procedures necessary for approval of the Statewide 303(d) List. (Proposed Listing Policy at Section 6.3) CASA supports the addition of this language to describe the process required for approval of the list; however, we believe two steps require modification. First, the</p>	<p><u>The proposed amendment to section 6.3 of the Listing Policy states that:</u></p> <p><u>“The Regional Water Boards propose region-specific recommendations for the section 303(d) list. The State Water Board may receive public comments concerning those listing</u></p>

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		<p>proposed amendments state that the State Water Board <i>may</i> receive public comments concerning the Regional Water Board’s proposed region-specific recommendations that are timely requested. It is important and necessary that stakeholders have the opportunity to provide comments. Therefore, this sentence should be revised to read “the State Water Board <i>shall</i> provide an opportunity for public comments”. Second, the proposed amendments state that before the Executive Director or the State Water Board approves the section 303(d) list, the State Water Board shall provide advance notice and opportunity for public comment. CASA agrees with this process, but request that the sentence read “...shall provide advance notice, opportunity for public comment, <i>and written response to comments.</i>” This addition ensures that an important step in the process, the State Water Board’s response to comments, is fulfilled.</p>	<p><u>recommendations that are timely requested for review pursuant to section 6.2 and may make changes to the recommendations prior to submitting the section 303(d) list to U.S. EPA.”</u></p> <p><u>The use of the word “may” in the preceding paragraph is the correct term because we cannot foresee if we will or will not get timely comments from stakeholders pursuant to section 6.2.</u></p> <p><u>The requested language exists in the proposed amendment to section 6.3 of the Listing Policy which goes on further to state:</u></p> <p><u>“Before the Executive Director or the State Water Board approves the section 303(d) list, the State Water Board shall provide advance notice and opportunity for public comment. Public comment shall be limited to listing recommendations that are timely requested for review pursuant to section 6.2 unless the Executive Director or the State Water Board elects to consider recommendations on other waters.”</u></p> <p><u>The addition of “<i>and written response to comments,</i>” to the preceding paragraph is not</u></p>

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			<p><u>necessary and is not present in the current Listing Policy. The State Water Board is legally required by 40CFR chapter 25 to provide a written responsive summary. Staff would prefer to stay consistent with the current Listing Policy language.</u></p>
24.7	California Association of Sanitation Agencies	<p>Finally, the proposed amendments would grant the State Water Board Executive Director the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA. (Proposed Listing Policy at Section 6.3) CASA has significant concerns with this modified provision. Currently the State Water Board is required to hold a public hearing on the final Statewide 303(d) List and to take a formal vote on any final decision made in regard to that list. Any listing changes are subject to State Water Board review, public notice and comment, and final approval. The existing process has provided interested parties (including CASA members) with two distinct opportunities to address a proposed new or revised listing or delisting, accompanied by appropriate notice when a listing proposal moves from the Regional Water Boards to the State Water Board. Under the proposed amendments, the Executive Director would be authorized to finalize any 303(d) listing recommendations and hold public comment and</p>	<p><u>Currently the Listing Policy section 6.3 states:</u></p> <p><u>“Advance notice and opportunity for public comment shall be provided. Requests for review of specific listing decisions must be submitted to the SWRCB within 30 days of the RWOCB’s decision. The SWRCB shall consider changes only to waters that are requested for review unless the SWRCB, on its own motion, decides to consider recommendation on other waters.”</u></p> <p><u>The preceding paragraph indicates that only listing changes that are timely requested for review and those that staff recommends changing, adding, or deleting are subject to public comment and review. This remains consistent in the proposed amendment to section 6.3 of the Listing Policy.</u></p> <p><u>See Responses to Comments 1.4, 1.5, and 1.6.</u></p>

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		<p>public hearings without State Water Board involvement and without a final State Water Board vote. Moreover, review of particular listing recommendations at the State Water Board level would be “waived” unless an interested party made a timely request for State Water Board review. Thus, interested parties will need to proactively submit a request for State Water Board review of the listing or de-listing decision in question in order to have an opportunity to comment. Converting the existing public, formal process into an administrative approval wholly delegated to the Executive Director eliminates an important step in the process and reduces overall transparency.</p>	
24.8	California Association of Sanitation Agencies	<p>We appreciate that the proposed amendments require the Executive Director to provide the public with notice of the proposed approval and an opportunity to provide written comments, and that under the revised policy the Executive Director <i>could</i> still set the listing decisions for a State Water Board meeting for its approval. However, delegating such authority to the Executive Director removes an important level of checks and balances. Moreover, many parties rely upon the written State Water Board response to comments, and it is not clear that the Executive Director or State Water Board staff would be</p>	<p><u>See Responses to Comments 1.4, 1.5, 1.6, and 12.3.</u></p>

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		<p>required to provide such responses under the proposed amendments. These amendments also provide the Executive Director with the ultimate authority to hear challenges to the Regional Water Boards' listing decisions without any guaranteed redress to the State Water Board itself as part of a public hearing process. CASA opposes this change and would prefer to maintain the existing process for State Water Board review of listing recommendations. In the alternative, CASA requests the State Water Board add a provision allowing an interested party to request State Water Board review of the Executive Director's decision.</p>	