

**02/06/2024 BOARD MEETING - ITEM #5
CHANGE SHEET #1 (CIRCULATED 02/05/2024)**

Board Item 5 relates to the consideration of a proposed resolution to adopt the Clean Water Act Section 303(d) list of impaired waters portion of the 2024 California Integrated Report. This change sheet shows revisions to the Draft Resolution and the First Revised Proposed Final Staff Report, both of which were released on January 26, 2024. The proposed revisions in this Change Sheet are shown below as red text underline additions and red text strikethrough deletions.

CHANGES TO THE DRAFT RESOLUTION

Change Whereas Clause No. 9 in the Draft Resolution as follows:

9. The public comment period for the 2024 303(d) List and draft staff report began on February 16, 2023, and closed on April 3, 2023. On March 21, 2023, prior to the close of the public comment period, the State Water Board held a hearing to receive oral comments on the 2024 303(d) List. In response to the written and oral comments received, the State Water Board distributed a Summary of Comments and Responses along with the Proposed Final 2024 California Integrated Report and Proposed Final Staff Report on January 4, 2024. The First Revised Proposed Final Staff Report (“Staff Report”) was released on January 26, 2024.

Insert a new Whereas Clause No. 12 in the Draft Resolution as follows and reorder the following clauses accordingly:

12. In accordance with section 6.1.4 of the Listing Policy, data supported by a Quality Assurance Project Plan (“QAPP,” which as used in this resolution also includes QAPP-equivalent documentation) or from major monitoring programs in California are considered of adequate quality and acceptable for use in developing the 303(d) list. Regarding data from major monitoring programs, section 6.1.4 states:

The data from major monitoring programs in California and published U.S. Geological Survey (USGS) reports are considered of adequate quality. The major programs include [Surface Water Ambient Monitoring Program], the Southern California Bight Projects of the Southern California Coastal Water Research Project, U.S. EPA’s Environmental Monitoring and Assessment Program, the Regional Monitoring Program of the San Francisco Estuary Institute, and the [Bay Protection and Toxic Cleanup Program].

This text has historically been construed as not setting forth an exclusive list of the major monitoring programs from which data would be considered of

adequate quality. Therefore, data from any major monitoring program, in addition to those identified under section 6.1.4, have been considered of adequate quality.

The Staff Report and responses to comments contain some statements that are inconsistent with the way in which section 6.1.4 has been interpreted and implemented in this 2024 listing cycle. Statements in the Staff Report or responses to comments that state or imply that all data used in primary lines of evidence for water quality standards attainment decisions for the 2024 listing cycle are supported by a QAPP are not accurate. In fact, the 2024 303(d) List contains attainment decisions that rely on data submitted by approximately seven data providers for which staff has been unable to verify whether the data is supported by a QAPP.

Staff is committed to verifying the existence of QAPPs acceptable for use (i.e., satisfy the minimum elements set forth in section 6.1.4) to support new 2024 303(d) List attainment decisions for data submitted by monitoring programs not explicitly identified in section 6.1.4 by September 2024, and update waterbody fact sheets with the documentation during the 2026 or 2028 listing cycle. If such data is not verified as being supported by a QAPP, the attainment decision will be revised as needed no later than the 2028 listing cycle to ensure that such data is not used by itself to support an attainment decision for water segment.

Staff intends to post the results of its verification on the [Integrated Report website](#), and inform the applicable regional water boards of its findings. The State Water Board expects that any waterbody-pollutant combinations included on the 2024 303(d) List that are based on attainment decisions not supported by a QAPP would not be scheduled for TMDL development until after fact sheets have been updated to verify the existence of an acceptable QAPP. In addition, the State Water Board encourages the Regional Water Boards to use their discretion where appropriate in establishing permitting, monitoring, and other data collection requirements.

Staff intends to interpret section 6.1.4's list of major monitoring programs to be an exclusive list. Commencing with the 2026 list, all data submitted by a monitoring program that is not explicitly listed in Listing Policy section 6.1.4 must be supported by a QAPP for that data by itself to support an attainment decision for a water segment. Moreover, beginning with the 2026 303(d) List, even though data used from the listed major monitoring programs are considered adequate, staff's goal is to obtain QAPPs for such data. This shift in interpretation and implementation furthers ongoing efforts to continuously improve the data quality of the Integrated Report program.

Change the existing Whereas Clause No. 12 in the Draft Resolution as follows:

~~12-13.~~ In some instances, data were assessed for waterbody-pollutant combinations where the waterbody is not designated with the Commercial and Sport Fishing (“COMM”) beneficial use in the applicable water quality control plan. The COMM beneficial use is defined as “the commercial or recreational collection of fish, shellfish, or other organisms including, but not limited to, uses involving organisms intended for human consumption or bait purposes.” Data were assessed because evidence suggests indicates that ~~the~~ this beneficial use is occurring and appears to be an existing beneficial use. The Water Boards have discretion under section 303(d) and the Listing Policy to evaluate data and information for all waterbody uses. (40 C.F.R. § 130.7(b)(3).) Additionally, developing the list shall include antidegradation considerations, including the protection of existing beneficial uses that are not designated. (Ibid.; Listing Policy, p. 1.) Fish tissue pollutant data and information r ~~32 24~~ waterbody-pollutant combinations for which comments were submitted pertaining to waterbodies that are not designated in the applicable water quality control plan with the COMM beneficial use were evaluated to determine if the information indicates the COMM beneficial use is occurring or likely occurring. The evaluation concluded that the COMM beneficial use is occurring or likely occurring for ~~18 20~~ waterbody-pollutant combinations and is deemed to be an existing use for listing purposes. ~~Fourteen~~ Three waterbody-pollutant combinations had evidence that the COMM beneficial use is not occurring and not an existing use. Waterbody-pollutant combinations not associated with the comments received and waterbody-pollutant combinations from previous integrated reports will be re-evaluated in future integrated report cycles. The State Water Board expects that TMDLs or other future actions to address waters on the 303(d) list where the COMM beneficial use is existing, but not designated, will be undertaken concurrent with or following the designation of the beneficial use in the water quality control plan. In addition, the State Water Board encourages the Regional Water Boards to use their discretion where appropriate in establishing permitting, monitoring, and other data collection requirements for the protection of an existing COMM use.

Insert a new Whereas Clause No. 14 as follows and reorder the following clauses accordingly:

14. The Proposed Final 2024 California Integrated Report (accompanying the Proposed Final Staff Report, dated January 4, 2024) assessed composite fish data for the Santa Ana Delhi Channel because the COMM beneficial use was construed as actually occurring (i.e., an existing beneficial use) even though it is not designated for COMM in the Santa Ana Regional Water Board Basin Plan, as described above. After further consideration, sufficient information supports the conclusion that the COMM beneficial use is likely not an existing use due to the net-fishing method by which fish were caught to conduct the composite sampling. Specifically, the Santa Ana Regional Water Board de-

designated the Water Contact Recreation (“REC-1”) beneficial use for Santa Ana Delhi Channel. REC-1 includes fishing where incidental ingestion of water is reasonably possible. The method by which the fish were caught is consistent with the REC-1 beneficial use. The removal of the REC-1 beneficial use indicates that activities such as net fishing are not prevalent or feasible in the waterbody. There is no other readily available information to suggest the waterbody is or has been used for commercial or recreational collection of fish, shellfish, or other organisms including, but not limited to, uses involving organisms intended for human consumption or bait purposes. As a result, there is insufficient information to conclude the COMM beneficial use is existing at the Santa Ana Delhi Channel, and the composite fish samples should not be evaluated for the COMM beneficial use. Therefore, the following 11 lines of evidence (LOE), which include data assessed for the COMM beneficial use in the Santa Ana Delhi Channel, should be removed.

- a. Remove LOE 238277 for heptachlor epoxide. The listing decision remains “Do Not List.”
- b. Remove LOE 238283 for dieldrin. The listing decision remains “Do Not List.”
- c. Remove LOE 238274 for endrin. The listing decision remains “Do Not List.”
- d. Remove LOE 238402 for endosulfan. The listing decision remains “Do Not List.”
- e. Remove LOE 238378 for lindane/gamma hexachlorocyclohexane (gamma-HCH). The listing decision remains “Do Not List.”
- f. Remove LOE 238531 for dichlorodiphenyltrichloroethane (DDT). The listing decision should change from “List on 303(d) List” to “Do not List on 303(d) List.”
- g. Remove LOE 238597 for polychlorinated biphenyls. The listing decision should change from “List on 303(d) List” to “Do not List on 303(d) List.”
- h. Remove LOE 238383 for chlordane. The listing decision should change from “List on 303(d) List” to “Do not List on 303(d) List.”
- i. Remove LOE 238368 and Decision 132666 for hexachlorobenzene/HCB.
- j. Remove LOE 238535 and Decision 132670 for mirex.
- k. Remove LOE 238570 and Decision 149194 for polycyclic aromatic hydrocarbons (PAHs).

Insert a new Whereas Clause No. 15 in the Draft Resolution as follows and reorder the following clauses accordingly:

15. Malathion data from Newport Bay, Upper (Ecological Reserve) were originally excluded due to unresolved data quality issues. The County of Orange corrected the data quality issues for some malathion data, which provided the necessary information to revise the listing recommendation for Newport Bay, Upper (Ecological Reserve) from “Do not Delist” to “Delist” (Decision ID 154746). It is likely that other data in the Santa Ana Region submitted by the County of Orange were not used because of challenges with identifying the method by which samples were collected, the lack of station location information, or the lack of sample date information. Staff is committed to working with the County of Orange to resolve these outstanding data quality issues in future listing cycles.

Change Resolved Clause No. 1 in the Draft Resolution as follows:

1. Adopts the 303(d) list portion of the 2024 California Integrated Report. Before submitting the 2024 California Integrated Report to the U.S. EPA:
 - a. Staff is directed to revise the Staff Report and responses to comments to correct statements that state or imply that all data used in primary lines of evidence for attainment decisions for the 2024 303(d) List are supported by a QAPP unless from a major monitoring program explicitly identified in section 6.1.4 of the Listing Policy.
 - b. Staff is directed to remove data and retire eleven LOEs, as described in recital number 14, used to assess waterbodies for the COMM beneficial use in Santa Ana Delhi Channel and make the conforming changes to the staff report, associated appendices, and responses to comments.
 - c. Staff is directed to revise the waterbody-pollutant for Newport Bay, Upper (Ecological Reserve) to include the corrected malathion data as a new LOE and revise the listing recommendation from “Do not Delist” to “Delist” for Decision 154746, and make conforming changes to the Staff Report, associated appendices, and the responses to comments.

Add Resolved Clause No. 3 in the Draft Resolution as follows:

3. Staff is directed to verify that any data supporting a new attainment decision in the 2024 303(d) List is supported by an acceptable QAPP, update waterbody fact sheets, and post the results of the verification, as described in recital number 12.

Add Resolved Clause No. 4 in the Draft Resolution as follows:

4. Staff is directed to work with the County of Orange to resolve remaining data quality issues so that other data may be considered in a future integrated report as a high priority off-cycle assessment.

CHANGES TO THE FIRST REVISED PROPOSED FINAL STAFF REPORT

On page 120, remove Section 7.3.2.2: Addressing Salinity in Chino Creek Reach 1B in its entirety as follows:

~~7.3.2.2 Addressing Salinity in Chino Creek Reach 1B~~

~~Several pollutants (i.e., total dissolved solids, sodium, sulfate, chloride) associated with excess salinity are proposed for listing in Chino Creek Reach 1B. The Santa Ana Regional Water Board is not planning to prioritize these constituents for TMDL development in Chino Creek Reach 1B, due to the ongoing efforts to control the discharge of salts in the Santa Ana River Basin.~~

~~Chino Creek Reach 1B is included in the TDS and Nitrogen Management Plan, which was first adopted into the Santa Ana Basin Plan in 2004 and subsequently revised in 2010, 2012, 2014, 2020, and 2021. This plan is designed to address the build-up of salts within the Santa Ana River Basin for both groundwater and surface waters. Each of the dischargers to the Santa Ana River Basin have been assigned allocations, which are implemented principally through TDS and nitrogen limits in the waste discharge requirements issued to municipal wastewater treatment facilities.~~

~~The Basin Monitoring Task Force was formed to implement the monitoring and analysis programs necessary for the TDS and Nitrogen Management Plan. This group, formed from water resource agencies in the Santa Ana Watershed, has obligations to prepare monitoring reports to evaluate compliance with applicable objectives; prepare ambient groundwater quality analysis and updates; update predictive models and evaluate allocations for wastewater treatment plants; and work with the Santa Ana Regional Water Board to conduct special studies and investigations as needed to ensure compliance with water quality objectives.~~

~~This program and activities implemented by the Basin Monitoring Task Force will continue to evolve and adapt to address the exceedances of water quality objectives in Chino Creek Reach 1B. The Basin Monitoring Task Force is expected to consider and approve the 4-year Chino Creek Workplan and QAPP (July 2024–July 2027) to develop and implement a monitoring program for TDS and other salinity constituents. This program is preferential to the development of a TMDL, and Santa Ana Regional Water Board staff will work with the Task Force members to gain compliance with water quality objectives.~~