In re:

Public Hearing for Water Quality
Control Policy for Developing California’s
Clean Water Act Section 303(d) List and Draft
Functional Equivalent Document.

TRANSCRIPT OF PROCEEDINGS
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SYLVIA BECKER & ASSOCIATES, INC.
Certified Court Reporters & Legal Videographers
4727 Wilshire Boulevard, Suite 401
Los Angeles, CA 90010
(888) 425-1010 Toll Free    (323) 857-0911 Fax
E-Mail: sbecker@sbecker.com
Web Site: www.sbecker.com
APPEARANCES:
For the State Water Resources Control Board:
   PETER S. SILVA
   NANCY H. SUTLEY
   MICHAEL LEVY
   CRAIG WILSON
   LAURA SHARPE
   PATRICIA GOUVEIA
MR. SILVA: Okay. Good morning, everybody. Why don't we get started.

First of all, thanks to everybody for coming out and for providing us your comments. With us this morning is my colleague, Nancy Sutley, from the State Water Board, and I will do the official introduction.

This is the time and place for a public hearing by the State Water Board regarding the proposed water quality control policy. We're developing California's Clean Water Act Section 303(d) list. This is the second of two public hearings on the draft policy. The first public hearing was held on January 28, 2004, in Sacramento.

I am Peter Silva, a member of the State Board and today's hearing officer.

I would like to also introduce the staff who are here responsible for the 303(d) list activities and will be assisting the Board during this hearing. From the division of Water Quality, we have Craig J. Wilson, as I think most of you know, Patricia Gouveia, Melanie Manuel, and Laura Sharpe, and also chief counsel...
Michael Levy.

California Water Code Section 1319.3(a) requires the State Water Board to develop guidelines describing the process by which the State Board and the Regional Water Quality Control Boards shall comply with the listing requirements of the Clean Water Act Section 303(d) list. The policy will ultimately establish a standardized approach for developing the California Section 303(d) list.

This hearing is being held to solicit comments on the proposed policy's recommended procedures. We're evaluating information solicited in support of listing or delisting county water bodies for the list. The policy addresses prioritization of listed water bodies for eventual development and implementation of TMDLs.

The State Board staff has prepared a final -- a functional equivalent document for the proposed policy in compliance with the California Environmental Quality Act. The FED presents an analysis of the environmental issues and alternatives to be considered by the State Board in adopting the proposed policy.

In today's hearing, the order of procedure will be a brief staff presentation, followed by testimony from interested parties. If you haven't already done so, if you want to speak, please fill out a
blue card. We will also -- if you'd like, we also want to receive written comments regarding the proposed policy.

The hearing will now be conducted in accordance with the technical rules of evidence. Testimony as reasonably related to the proposed policy will be in evidence. Written and oral comments are all part of the record.

At today's proceedings, oral presentations will be limited to no more than five minutes. If you could, before you begin your testimony, identify yourself by name and address for the court reporter. And if any of you have any business cards, that would also be helpful.

If the speaker before you has addressed your concern, please state your agreement and do not repeat the testimony.

The record will remain open. I want to point out that it has been moved back to February 18, 2004. It was originally February 11th. Following the close of the record, State Board staff will review and respond to all comments in writing. Written responses will be included in the final FED with a revised policy as necessary.

Staff will make the revised policy available
to interested parties at least 15 days before consideration by the Board. Interested parties should notify the date and place of future Board workshops and Board meetings where the proposed policy will be considered for adoption.

That concludes my opening statement, and I think Craig will give a speech.

MR. WILSON: Good morning, Mr. Silva, Ms. Sutley.

My name is Craig J. Wilson. I am chief of the TMDL listing unit in the Division of Water Quality of the State Water Resources Control Board.

I would like to begin my presentation with a brief overview of the Section 303(d) requirements and the process that led to the development of the policy. Then I will go, very briefly, into describing the documents that are the subject of this hearing.

Section 303(d) and the accompanying federal regulations requires states to regularly identify water bodies that cannot achieve applicable water quality standards after certain technology-based controls have been implemented.

In complying, California has developed successive lists of waters not meeting water quality standards by any league since 1976. After 1996, public attention increasingly
focused on an important consequence of the Section 303(d) listing, or the development and implementation of total maximum daily loads, or TMDLs.

Simultaneously, public demand for regional consistency and transparency in the listing process intensified. In response, the Water Code now requires the State Board to prepare guidelines for listing and delisting of water bodies on the Section 303(d) list.

These guidelines, contained within the draft policy, provide consistent, transparent approaches for the identification of water quality limited segments using a standard set of tools and principles to evaluate data. It also provides for a scientifically defensible approach to address the identification of waters on the list, and it provides a transparent public process.

State Board regulations independently require that an environmental review equivalent to the California Environmental Quality Act, or CEQA document, accompany policies proposed for State Board adoption.

State Board staff has developed a functional equivalent document, or FED, that contains, as required by those regulations, a brief description of reasonable alternatives to and mitigation measures for the proposed activity.

The purpose of the FDT is to present
alternatives in State Board staff recommendations where
the policy is to guide the development of the
Section 303(d) list.

The FED identifies eight main issues: First,
the scope of the policy; second, the structure of the
Section 303(d) lists; third, the weight of evidence for
listing and delisting; fourth, listing and delisting
with single lines of evidence; fifth, listing and
delisting with multiple lines of evidence; sixth,
statistical evaluation of numeric water quality data;
seven, policy implementation; and lastly, the eighth
point is the TMDL priority ranking and completion
schedule.

The 2001 Budget Act supplemental report
requires the use of a weight of evidence approach in
developing a policy and criteria that ensures that data
and information used are accurate and verifiable.

The FED discusses -- and the draft policy
contains -- a weight of evidence approach that uses
single and multiple lines of evidence, alternate data
analysis procedures, and the option for regions to use
alternate data exceedance frequencies in establishing
this list. The FED also recommends approaches for the
evaluation of numeric data consistent with the
expression of water quality objectives or promulgated
Lastly, the FED assesses the potential adverse environmental impacts of the proposed policy.

In conclusion, the intent of the proposed policy is to provide the Regional Boards with flexibility before listing decisions are made while at the same time providing a listing process that is consistent, transparent, and based on a standard scientifically defensible approach to identify waters for this list.

Should the need arise during the hearing, we are prepared to answer any questions you might have regarding the policy or the FED.

This concludes my presentation. If you have any questions at this point, I would be happy to answer them. Thank you.

MR. SILVA: Thank you, Greg.

Again, we have got lots of time. I think we have got, like, 16 speakers so far, I think. But I would like for you to keep it within five minutes or so.

And again, if people before you have already stated what you wanted to say, please say, "I agree with so-and-so." You will have a chance for written comments also.
So with that, what I would like to do is --
the environmental community has asked to go together, so
why don't we go through the cities first, city and
county reps, and then we will end with the environmental
community reps.

First we have John Pratt.

MR. PRATT: I'm not used to being first. Thank you
for the opportunity to speak. My name is John Pratt.
I'm a City of Bellflower city council member. Thank you
for the opportunity.

First, I would like to commend the Board for
its stated goal to establish a standardized approach for
developing California's 303(d) list. The development of
a uniform policy for listing water bodies is an
important step to improving the validity of listings.
We do, however, have concerns about the December draft
policy document.

As my fellow city council colleague Randy
Monker (phonetic) noted in 2002, our city is struggling
to meet its permit requirements. We have already
shifted thousands of dollars from existing programs and
transferred employee hours to help cover the costs of
the permit compliance.

We are already reducing service levels in
several areas in order to pay for strong water programs,
and our staff has projected city expenditures of over $2 million over the next several years in order to meet the requirements in our permit. We are, therefore, mindful of the need to examine the relationship between effectiveness and the cost in storm water quality regulation.

We are pleased that during preparation of the 2002 list, you removed the San Gabriel River for ammonia and toxicity and placed the river on the enforceable programs list for these pollutants and that you clarified that the lists for copper and zinc were for dissolved metals only.

We also agree with your placing the San Gabriel River estuary on the monitoring list for trash. However, we continue to be concerned that some listings from the 1998 303(d) list were simply carried forward onto the new list without adequate review and explanation.

Plus, specific pollutants are causing the various conditions of pollution noted in the 2002 list for the San Gabriel River, including abnormal fish histology, algae, high choliform count and toxicity. Specific pollutants must be identified before TMDLs can be developed. We support the recommendation that these conditions or indicators be placed on a separate list
until specific pollutants are identified.

We also continue to believe that the State and Regional Boards need to apply common sense and look at the reality of the San Gabriel River. The portion of the San Gabriel that flows along the eastern edge of Bellflower is a concrete-lined channel. The Los Angeles Regional Water Quality Control Board should review the beneficial uses that it does assign to flood control channels such as the San Gabriel above the estuary. These uses were defined several years ago, and some of them may not be applicable. If they are erroneous, we may have inappropriate listings of impairment.

Furthermore, the flows through the low-flow channel in the lower reach of the river above the estuary during most of the year are discharges of treated effluent. If it were not for these flows, the San Gabriel River channel would be dry for most of the year. Certainly the facts should be considered in any evaluation of the beneficial uses and water quality standards adopted for the San Gabriel River.

We disagree with the way the staff has structured the 303(d) list in the current draft. The enforceable programs list and the TMDLs' completed list should remain separate lists, not categories of the 303(d) list. The 303(d) list should be restricted to
impairments where the pollutants causing the impairments are known and where other enforceable programs are not in effect.

Furthermore, the monitoring and planning lists should not be lost. Perhaps we should go back to a watch list that would incorporate both of these lists and more accurately describe the purpose of the list.

Thank you again for the opportunity to comment today on the draft 303(d) list policy.

MR. SILVA: Thank you.

MR. PRATT: I have a copy here for the clerk here if you would like them.

MR. SILVA: Desi Alvarez.

MR. ALVAREZ: Good morning. My name is Desi Alvarez, and I am here speaking on behalf of the executive advisory committee of the LA County Storm Permit.

I would like to thank you for the opportunity to speak to this matter this morning and say that we appreciate the Board's recognition of the significant level of local interest in this policy and your making yourselves available to hold a hearing here in Los Angeles County.

The executive advisory committee of the LA Permit believes that past, current, and future
findings and actions in relation to the 303(d) listing
and TMDL programs are of significant importance and that
the Board's efforts to hear and carefully consider input
on this is both lawful and appropriate.

In many respects, the local 1998 and 2002
303(d) listing process appears to border on
capriciousness due to listings for pollutants that are
unidentified, such as the toxicity, in the construction
and demolition of new watch lists. Both listings and
delistings are based on dubious data and conservative
water quality objectives, such as extrapolation CPR
standards.

We sincerely certainly hope that the final
document will settle much of the confusion that clouds
what should be a transparent regulatory process allowing
our municipal agencies to concentrate on the most
significant issue of water quality issues.

We recommend returning to the multi-list
format that appears in prior drafts and, more
importantly, was consistent with EPA guidelines and the
National Academy of Science report to Congress.

The 1998 and 2002 lists contain impairments
based on dubious or inadequate data that was quickly
rescinded or shuffled to other lists, other impairments
such as toxicity and indicator organization pollutant
groups. We request the monitoring list be reconstituted so that specific controllable pollutants may be identified prior to TMDL preparation. This will ensure the listings will result in solid, predictable actions.

Periodic reevaluation of contaminant listings should be mandatory. New listings should be balanced by delistings due to new data and/or objective achievements.

The statistical methods identified in Issue 6 are probably the most important aspect of this policy document. They have the potential to eliminate the perception that some listings have been set arbitrarily or that delisting is overly onerous and subject to political decisions that cannot be rationally objectified.

With this in mind, we courage staff to carefully review the descriptions to clarify their meaning to the greatest degree and provide additional language to clarify any analytical confusion to the matrix effect, detection quantification limits, and impact of core data about one parameter or another.

The discussion on trend analysis should be expanded to consider trends of meteorological conditions such as extended droughts or increasing temperature regions which may improve contamination concentrations.
And the concept of transitioning numeric water objectives between adjacent receiving water reaches has already risen locally as different coalitions discuss this at public forums.

We recommend that utilization of pool data from different receiving water areas will resolve any discord and lead to cases where alternative but technically equivalent data could independently argue for listing and monitoring a new list. So therefore, we would encourage that any policy be relied on as site-specific data as possible.

Thank you very much for the opportunity to make these comments.

MR. SILVA: Thank you.

Next is Carrie Inciong. I apologize for your name. That's -- the hardest part about being a hearing officer is pronouncing names.

MS. INCIONG: For the record, that was the right pronunciation.

My name is Carrie Inciong, like you said. I am with the LA County Department of Public Works. My comments are detailed in a letter that I will be handing over to Mr. Wilson after my talk.

First of all, thank you very much for holding a meeting down here in LA. We really appreciate that.
And let me just jump right in. LA County Public Works believes it is necessary to reevaluate water quality standards and beneficial uses within the reachable basin plans prior to the listing of additional waters or initiation of TMDL development of waters already listed on the 303(d) list.

Also, Public Works is in favor of the planning list on which waters with some indication of an impairment could be placed, as was discussed in the July 2003 draft.

We also support previous comments already made regarding the inclusion of the reevaluation of each apparent water body on the 2002 303(d) list.

Also, with regards to the water quality limited segment factors section, which states, "For sample populations less than ten with three or more samples, see the evaluation guideline. The segment shall be listed," this statement is inconsistent with Table 3.1, and we request that the State Board address that inconsistency.

Also with respect to Section 3.1.2, Public Works believes that while dissolved oxygen data may be enough to place the water body on the list or may be used as secondary data for the 303(b) listing, it is inadequate for intricate impairments.
Also with respect to Section 3.1.10 of the proposed policy, the trends in the water quality section allow the use of short-term data which may be affected by a hydrological condition, such as drought, as opposed to actual degradation of the water quality. We believe that data from the most recent five to seven years may be more appropriate to avoid impacts of such hydrologic conditions.

Section 3.1.11, alternate data evaluation, appears to allow the listing of a water body using data that would otherwise be considered inappropriate. Public Works believes that the inclusion of this section, that a listing policy will allow the additional waters on the list which are not just a part of the impaired, we'd request the deletion of this section.

Also, with respect to the language in the policy which states "relatively unimpacted watersheds" and how it relates to recreational uses, we request that there be clarification in the document regarding the term "relatively unimpacted."

Section 6.1, we believe that this is inconsistent with Section 6.2.5.2, which states that only the most recent ten-year period of data and information shall be used for listing and delisting waters. So we would request that that inconsistency be
With respect to Section 6.2.5.6, we agree with previous comments made by Desi Alvarez regarding the pooling of data for the joining segments.

On Section 6.2.5.7, there is no discussion --
Section 6.2.5.7, by the way, has to do with natural sources exclusion. There is no discussion in this document of the use of a natural source exclusion to delist waters, and we request that you include language reflecting that.

And that concludes my comments. Thanks.

MR. SILVA: Thank you.

MS. SUTLEY: I have a question before you leave. Just -- you made a comment that you think that the alternative data evaluation was appropriate, but we have direction from the legislature that we need to look at the weight of evidence. And this section, I believe, was intended to cover the weight of evidence direction from the legislature. Do you have an alternative recommendation on how we should address the weight of evidence or --

MS. INCIONG: No, we don't.

MS. SUTLEY: Okay. Thank you.

MR. SILVA: Heather Merenda.

MS. MERENDA: My name is Heather Merenda. I am a
sustainability planner for the City of Santa Clarita. I have provided the business card to the --

MR. SILVA: Great.

MS. MERENDA: First of all, the City of
Santa Clarita would like to commend the State Water Resources Control Board on its phenomenal efforts to establish consistency to the 303(d) listing process in California, and we appreciate the opportunity to provide verbal testimony this morning.

The City will provide detailed written comments on a variety of issues by the written comment deadline. These comments and objections revolve around the themes of maintaining uniformity in the different processes and clarifying language in order to avoid confusion by all parties involved.

However, today be we would like to highlight two issues of concern. The first issue is Issue 6(f), quantification of the chemical measurements. We would like for you to add and recommend a third alternative that nondetect should only be interpreted as unknown.

If you want more sensitive readings, then more sensitive data and more sensitive tests should be required, even if that is more expensive and it results in budget problems for monitoring programs and for compliance monitoring programs. The State's standards
are just too high to assume that pollutants are present when they may not be.

And Issue 7(a), in review of the existing Section 303(d) listing process, we would like you to add and recommend a third alternative that prior to developing a TMDL, the listing data that put the pollutant concerned on the 303(d) list should be evaluated with the new criteria. This will help ensure unnecessary TMDLs and focus limited resources on priority areas, reduce the time period for Regional Board and State Board staff from preventing unnecessary listings, and help establish quality data that TMDLs are involved which will reduce the TMDL timeline.

Again, we thank you for holding this public hearing to give everyone an opportunity to participate in developing this process; and by working together, we can all end up with a policy that is both protective and restorative while providing consistent accuracies to the TMDL list. Thank you.

MR. SILVA: Thank you.

Next is Clayton Yoshida.

MR. YOSHIDA: My name is Clayton Yoshida representing the City of Los Angeles Bureau of Sanitation. Thank you very much for the opportunity to submit comments and especially for coming down to this
The Bureau is committed to supporting the Regional Board. In doing so, we want to emphasize the importance of water quality decisions which are both scientifically based and statistically based.

We believe that the policy will improve the understanding of the decision-making process and consistency among regions of the State.

However, the Bureau of Sanitation requests that a separate list, a monitoring and/or planning list be restored to the policy as it was written in the July draft. The separate list will contain water bodies that have insufficient scientific data to support a listing on the 303(d) list.

The Bureau also requests that provisions be included in the policy to ensure that water bodies on this separate list are evaluated in a timely manner. If we address the length of time on a separate list and also the number of samples required to be collected, the list can be a valuable tool for prioritizing our waters without delaying cleanup efforts.

We also request that a separate alternative enforceable program be restored to the policy. Waters with such alternative programs would be listed separately from the 303(d) list, provided that the
enforcement programs are shown to be effective in our region.

A good example is the bay protection cleanup program which takes cares of sediments in our bays and harbors. Such a program can potentially be a viable alternative to the TMDL development in our region.

We also request that the policy contain a requirement to review and revise old 303(d) listings based on elements specified in the new policy. We recognize that resource limitations may prevent timely review of all of the old listings, but we propose an application process by which the interested public may propose a closer examination of selected water bodies that they're interested in.

We also request that --

MS. SUTLEY: Can I stop you there a second and ask you a question about that with respect to that proposal? The application, do you want the application process during any time or the normal listing cycle?

MR. YOSHIDA: I would say during the normal listing cycle.

MS. SUTLEY: Thank you.

MR. YOSHIDA: All right. And also, we request that criteria and standards taken from guidance documents used in the decision-making process be promulgated in
our basin plan so that the general public may comment on the appropriateness of these documents for our region.

In the past -- in past listings, certain studies have been used to make listing decisions, and they may -- they may be appropriate for our region, but then again they may not be. So we want to be able to have the opportunity to comment on those things.

And finally, we agree with the proposition in the policy that pollutants must be identified before TMDLs should be developed.

And that's it. And thank you once again for the opportunity to comment.

MR. SILVA: Thank you.

James Colston.

MR. COLSTON: I am James Colston with the Orange County Sanitation District.

I would like to first support the comments of the California Association of Sanitation Agencies, both the oral comments that were provided and the subsequent written comments that will be provided.

It's very important that there is a transparent process for listing and delisting; and to the extent that this policy will resolve that issue for the State, it's strongly supported by the Orange County Sanitation District.
I wanted to speak briefly about one issue, and that is the need for the planning and monitoring lists. We would like to see that restored to the policy. My own experience with it is in the Santa Ana region where there was a listing for unknown toxicity. And in this instance, it resulted in an effort to develop TMDLs. And in one instance, it was for a pollutant that was later determined was not impairing the water body.

And in another instance, it was based on a threshold number for a pollutant that there had been no water quality standard yet developed; and yet this particular pollutant was actually naturally occurring in the local water body, but the threshold had been determined in alternative water bodies. That resulted in an enormous expenditure of time and resources.

And really what it does is it pulls the TMDL process out of where it belongs, which is water quality standards. Water quality standards are the backbone of the Clean Water Act; and to the extent that the TMDL process is removed from that in terms of there isn't an identified pollutant and there isn't an established criteria for what the appropriate amount of the pollutant is in that water body, then the TMDL process is going to be delayed and take more time and take more money and take more resources.
And as we all know, there is a great deal of
TMDLs that need to be done and should be done within the
State. So I just want to speak to that. My own
personal experience is why I believe that we should be
restored to the process and how it will make for a
better TMDL process and improve, more importantly, the
water quality standards program for the State.

MR. LEVY: Mr. Colston, can you clarify which
waters you're referring to in Santa Ana?

MR. COLSTON: I am referring to the Newport Bay
listing for toxicity, unknown toxicity.

MR. LEVY: Thank you.

MR. COLSTON: I believe that that list was
supported by the National Academy of Sciences report to
Congress.

So that's it. Do you have questions?

MR. SILVA: Thank you.

Richard Watson.

MR. WATSON: I have copies of my testimony which I
can pass out.

Good morning. My name is Richard Watson.

Today I am before you representing the Coalition for
Practical Regulation. I want to thank you, as others
have, for this opportunity to comment on the draft
listing policy.
I would like to make a few general comments and review a few policy questions and, finally, make a couple of recommendations.

We, too, would like to commend the State Board for making progress in the 303(d) listing process. We enthusiastically support the Board's goal of standardizing listing procedures. The improvements you've made in the 2002 listing process should continue to be improved upon.

The 303(d) listing policy is one of the most significant policy positions you will be making this year. As other people have stated, when water bodies are put on the 303(d) list, that then leads to the requirement for TMDLs.

You will notice the public hearing correctly states that the Section 303(d) list must include water quality limited segments, associated pollutants, any ranking or priority ranking of the waters for the purpose of developing TMDLs in the next two years. So it's pretty clear that you do have to name the pollutants.

The environmental community often refers to the Section 303(d) language as fairly general. We recommend that you look carefully at 40 CFR 130.7, which provides detailed regulations for implementing
Section 303(d).

One observation I made about the existing list, for some reason in 1998 it became more of a list of generally impaired -- a general list of impaired water bodies, not really a focused 303(d) list consistent with 40 CFR 130.7.

In listening to the commentary up in Sacramento through the Internet, I noted that the Regional Board staffs don't want priority ranking and schedules linked. This may be appropriate for most impaired waters, but it is not appropriate for those waters where a pollutant has been identified and a TMDL is required. The section I cited requires identification of those waters that will be targeted for development in the next two years.

We have reviewed the 2002 list in relation to the requirements, the 40 CFR 130.7, and will provide a list of these 2002 listings for which pollutants were not identified and we think should be removed from the list.

A couple of policy questions, I think, that are involved here and have to be addressed in the FED document. Really, who makes the policy? What are the roles of the State and Regional Boards? Are we to have a standardized scientifically-based list, or are the
Regional Boards and the Regional Board staffs going to have the same level of flexibility and the lack of State Board oversight that they had prior to the 2002 list?

Should the 303(d) list be a catch-all compared to waters, such as it became in 1998, or a list of impaired waters for which pollutants have been identified and for which a TMDL is still to be developed? And if there is some sort of general impaired waters list, what should it be like, and how should it be organized?

And we support the comments that others have made, and I won't go into those same comments.

I would like to make a couple of recommendations. We recommend a listing policy specified that the 303(d) list should consist of impaired water body segments for which the pollutants have been identified and a TMDL is still required, consistent with 40 CFR 130.7.

We recommend that previous listings for which specific pollutants have not been identified be placed on a new pollutant identification list for high priority research and monitoring.

We further recommend that the 2004 listing process be focused on preparing an impaired waters list that would be part of the California integrated water
quality report discussed in the July 2003 draft and mentioned in Section 6.2.1 of the December draft.

We recommend a single impaired waters list with categories, but our recommendation differs somewhat from the one of staff's. We recommend a California impaired waters list containing the following:

A 303(d) list consisting of water quality limited segments for which pollutants have been identified and for which TMDLs are still required;

Secondly, the TMDLs completed list, it lists water quality limited segments for which TMDLs have been completed;

Thirdly, the alternative enforceable program that we discussed earlier;

Fourth, the list that I mentioned earlier, the pollutant identification list, to consist of water quality limited segments previously listed for which pollutants were not identified;

And lastly, a watch list, or if you want to call it a planning and monitoring list, consisting of segments expected to be water quality limited; but with insufficient data information, it placed them on the 303(d) list.

I want to again thank you for allowing us to provide these comments, and we will be providing
detailed written comments for your consideration in the
FED.

MR. SILVA: Thank you.

Blane Frandsen.

MR. FRANDSEN: Thank you. My name is Blane
Frandsen, and I am the director for Public Works and
city engineer for the City of Lawndale, and I support
the comments of Mr. Watson who previously spoke for the
EPR crew.

I have come here today representing the City
of Lawndale. Lawndale is a two square mile area city
here in the South Bay area. We are a tributary to the
Dominguez channel.

MR. LEVY: Pardon me, sir. Can you speak up a
little bit louder, or stand closer to the microphone?
Thank you.

MR. FRANDSEN: I will note that Lawndale is a small
city here in the South Bay area of Los Angeles county,
and we are a tributary to the Dominguez channel. The
Dominguez channel is a 110 square mile watershed in the
southern portion of the county. We are a tributary to
the channel, and that portion is listed on the 303(d)
list as about Vermont.

The people of Lawndale and the local
government share a common desire to improve the water
quality of our city. We want to be a good neighbor to the cities around us, and we recognize the importance of controlling pollution from storm water runoff as a part of that goal.

However, we are extremely limited in resources and are struggling to comply with the current permit requirements, particularly now with regards to the State budgetary conditions that are currently befalling us. We want to do the right thing, and we want to see that meaningful results come from our expenditures.

We are concerned about the inclusion on the 303(d) list of generalized listings for specific pollutants are not identified.

We are also concerned that the 303(d) list still contains a legacy of historic pollutants, such as chlordane in PCP's, which should be handled differently; that the planning/monitoring lists were included, as in the July draft policy. That would be one possibility for observing these legacy pollutants, to see if their concentrations and possible adverse effects have been reduced through time. It's just not possible at this level to make known typically these are not currently used. The legacy pollutants should be addressed through some other enforceable program, we believe.

We are also still concerned about the listing
of the Dominguez channel for high choliform and for a high choliform count. The Dominguez channel, you know, is not a body contact recreational facility; it is a flood control channel where no legal recreational use exists. It is unclear as to what, if any, use is being impaired.

We recommend that the 303(d) listing policy require reevaluation of water bodies listed on previous 303(d) lists. Many previous may be inappropriate because of inadequate data quantity and quality; evidence that natural sources have caused or contributed to the impairment; and/or water quality standards upon which listings are based are inappropriate.

We recommend reevaluation of the water bodies to ensure that TMDLs are conducted where appropriate and necessary. This recommendation is consistent with the July 2003 draft policy and assist in prior tracking of expenditures of scarce resources.

We're concerning the two sections of the draft policy, trends in water quality and alternate data evaluation, may create loopholes for listing water bodies that are not based on solid scientific evaluations. Trends in water quality may be linked to hydrologic conditions such as drought rather than increases in pollutants or degradation of water quality.
conditions.

We encourage the State Board to carefully address these concerns and develop a policy that ensures objective methods are used to evaluate impairments and that 303(d) listings are both scientifically defensible and appropriate.

As I said earlier, the City of Lawndale supports reasonable scientific-based controls to mitigate pollution through storm water.

We hope you will consider our comments in revising the draft 303(d) listing policy to reflect a sound basis in science so we can focus our efforts where they will do the most good to clean up the water of Lawndale and the Southland cities.

Thank you. I have written a copy of these comments for you.

MR. SILVA: Great. Thank you.

Eric Escobar.

MR. ESCOBAR: Good morning. I am Eric Escobar for Shad Rezai, general manager for the City of Inglewood.

I would just like to express how we feel at the City of Inglewood regarding these 303(d) lists. We are in full support of comments that have been made so far, and we hope that the decisions taken by the State Board are something that can help the cities in
these difficult times so that resources can be invested
to create solutions that would provide the results that
we are all looking for. Thank you.

MR. SILVA: Thank you.

Heather Lamberson.

MS. LAMBERSON: Hi. I am Heather Lamberson, and
today I am representing the LA County Sanitation
Districts. We are a local waste water entity; and we
operate 11 waste water treatment plants in Los Angeles
County, and we discharge to a number of waters that are
listed for various constituents.

We have worked with our Regional Board on
several TMDLs, and we have also been commenting on
different revisions on the 303(d) list over the past ten
years. So we feel that we bring both a local
perspective and hands-on experience to both the listing
process and the TMDLs that have resulted from that
listing process.

Now, we have seen these things in past that
have been made using a variety of assessment
methodologies; and these methodologies have applied
varying degrees of data quality and quantity in addition
to different types of data, and those types of data
range from visual observations to one-time studies to
water quality data from discharge or monitoring
And we just want to emphasize that there is a need to balance environmental protection with technical scientific integrity, and we feel that this policy goes a long way toward achieving that.

This policy makes significant steps towards laying out a methodology to clearly identify the beneficial use of being impacted, as well as the standards that are to be evaluated. And that's something that hasn't always been clear in past listing efforts, and we feel that this is especially important when it comes to dealing with standards.

Just some specific comments that we have, we feel that in order to get this program on an even playing field that the State Board should reevaluate existing 303(d) listings to ensure that these listings meet the requirements of the new policy. We feel that this is really important. We feel if a water body couldn't be listed today under the new policy, then it shouldn't be on the 303(d) list, regardless of whether or not there is new data and information on the water body.

Now, when these listings are evaluated, maybe some waters may come off the 303(d) list in cases where impairments are undetermined, whether cause of
impairment is unknown, or in cases where data is insufficient in order to determine if an impairment exists. And those are some of the reasons why we also strongly recommend the establishment of a monitoring list. Waters for where there is this type of uncertainty should not be on the 303(d) list.

One other specific comment that we have regarding policy is that we feel it doesn't make sense to list a water body for toxicity unless it can be shown that the toxicity is significant from a statistical perspective, that the toxicity is persistent, and the toxicity is associated with an identified pollutant.

All of these conditions would be required to successfully complete a TMDL for toxicity. So therefore, we think it makes sense to use a weight of evidence approach when evaluating toxicity. So we would recommend that a change from using toxicity alone as a listing factor, which was proposed as an alternative in the functional equivalent document, to only using Alternative 3, which is the use of a weight of evidence approach.

One other technical comment that could be significant in the implementation of the policy is that when considering listing factors such as adverse biological response and degradation of biological
populations, the policy doesn't really provide any
guidance on how baseline or reference conditions are to
be established.

So that's -- as you can imagine, this is going
to make all the difference on how these evaluations turn
out, what the baseline and the reference condition is.
So therefore, we would recommend some additional
guidance be provided in the policy on how to establish
these conditions.

And in closing, we'd just like to commend the
State Board for all of their hard work. We think that
you have developed a credible and scientifically-based
policy, and we support the State Board moving forward
with the policy. We understand that it's the State
Board's intent to have the policy in place before the
next update of the 303(d) list, and we support that
approach as well. Thank you.

MR. SILVA: Thank you.

Mary Jane Foley.

MS. FOLEY: Thank you.

Good morning. My name is Mary Jane Foley, and
I am here today for the Southern California Alliance of
PODWS, and I have a card so it will help you. I always
have something for the court reporter.

Thank you for the opportunity to come and make
some comments. A lot of our members have already spoken
this morning. Before I reenforce some of their
statements in a very brief manner, I want to do a big
compliment to the staff, to Craig and to his -- the
people who have worked with him, because all throughout
this process they have been so accessible, so helpful.
It has been a real pleasure, and they deserve a whole
lot of credit.

So on the policy, the policy is a real
improvement, as a lot of speakers have said. It's the
best that has ever existed, in our opinion. We like the
standardized approach. We like the transparency. We
like the fact that it requires fact sheets, public
hearings before the Regional Board which didn't exist in
the last go-around, and opportunities to comment before
the State Water Board.

We believe the one list is problematic. We
believe that the State Board should go back to including
on the 303(d) list only those waters that do not attain
water quality standards due to pollutants for which the
TMDL is required.

And the reason the one list is scary is that
history shows that sometimes in a certain era, everybody
understands the rules of the game and makes their
assumptions on how this can work out to be fair and
practical, and then the rules of the game change. New people come in, EPA has a different decision tree that they pass down to the State and they say, "No. We're not going to do it that way. They're on the list. They're on list," and there's no getting off the list.

And so having experienced that in my lifetime, I think that the need for multiple lists or a couple of lists is critically important to be able to assure the next generation that they don't have to interpret what this generation meant.

And then the comments that have been made on the planning list or monitoring list to recognize the areas where the impairments were undetermined or there was insufficient data, I think it's a very pragmatic way to go. Most people really liked the July document, the draft document, and I understand how it got changed. And I am not going to revisit any of that, but the one list, to me, is the number one thing to petition the Board to reconsider.

Also, in our comments, in our written comments that will come later, we commend the Board for providing a mechanism for the reevaluation of water bodies identified in the 303(d) list using the listing policy. Once it is approved and we -- I would also -- Clayton, who came up, and some of the other people
referenced an ability, when a party requests in writing, to reevaluate water bodies where they think that they were done in -- that the information may be invalid or inappropriate. We support that because of the scarce resources and because anybody who has done research on the 1998 list realizes it was pretty loosely done. And it's nobody's fault. It's just the way that guidance came down at that particular time from EPA to the State.

And given the lack of resources, given the desire to look at priority and priority pollutants, priority in where we are going to do these TMDLs, I think the ability to have a party -- you know, and the burden would be on the party to look at some of that -- is not an unreasonable request.

So we thank you very much for coming and especially for coming to Southern California. And we look forward to working with you on it, and we thank you for this policy.

MR. SILVA: Thank you.

Rodney Anderson.

MR. ANDERSON: Good morning. My name again is Rodney Anderson, and I am representing the City of Burbank Public Works. And I, too, want to commend the Board and staff for putting this policy together and
working on this. I think it is a great improvement from how the lists have been done in the past. To have a transparent policy is going to be very helpful.

Last year, when the 2002 lists came out, we made comments regarding a certain listing of Academy, which was the Burbank western channel. And at that time, we submitted a number of data points. They all were nondetects. And yet because there was no policy -- it was just said that staff pollutants were low, so it will continue to be listed.

Well, with this new policy, it looks like it's going to be transparent. We look forward, when this policy is implemented, that we can get the delistings that we think are justified. So we do appreciate that this is being done.

And at the same time, although we think that this policy will be good, we do have a couple of issues that we would like to address. Number one -- and it was just mentioned by Mary Jane, and I am going to add to her comments regarding the reevaluation of some previous listings, the 1998 listings. We are disappointed that all of those listings will not be reevaluated according to this policy. But I think that we recognize that performing a TMDL is much more time consuming than evaluating a potentially wrong listing. So although it
would take a lot of time to reevaluate all of the listings, it's even more time to do TMDLs for those listings.

However, at the same time, it is the likelihood that a number of those listings may be justified. We would request that when the State Board is requested in writing from a party to reevaluate a certain water body that that old listing would be looked at. That would allow those listings that we can all agree that yes, there is an impairment, there is a problem, those would not have to be reevaluated.

But those where we think that there is a problem should be reevaluated, even in the absence of new data. The reason for this is some of those listings, we believe, were done in a drive-by approach.

For example, there are some nuisance listings for the Burbank western channel: algae, odor, and scum. And those that were on the 1998 listing were carried to the 2002 lists. It's unclear to us how those listings were created and what additional data we can even submit to get those delisted. It's unlikely that individual observations will be accepted as new data to have those reevaluated, even though we believe that's how those listings were created in 1998.

So to ask for new data on some of these
nuisance listings is very difficult for us, and we know that the kind of data that was probably done to get the '98 listings won't be accepted now. So we would want some of those reevaluated when requested in writing.

The second issue I would like to talk about is the trends in water quality. We disagree that trends in water quality should be used as a criterion to list water segments that would not otherwise meet conditions in the draft listing policy. This criterion includes the inclusion of water segments on the 303(d) list in the absence of information that water quality objectives are exceeded or that beneficial uses are impaired.

As stated in the FED, there are no widely accepted approaches for documenting trends, and the data is often difficult to interpret.

The draft listing policy does describe five very general guidelines for determining these trends, but those guidelines are somewhat ambiguous and lack specific requirements for consistent, statistically valid data evaluations.

For a normal listing with data, there is a requirement that 10 percent of samples with a confidence level of 90 percent, using binomial distributions, is how one gets listed.

For the trends, it's not clear that -- you may
have zero exceedances and still get listed. There is no
crude guidelines on that. Perhaps specific
guidelines, such as at least 5 percent have to be -- of
exceedances, or there is a 25 percent increase in the
pollutant concentrations over a five-year period, or if
there is a minute number of samples. The only statement
is that there are three years, and they have to look at
some general guidelines. So those criterion are so
subjective, we feel they need to be nailed down a little
bit more if trends are to be used at all.

And that concludes my statements. I
appreciate again you coming down here and taking the
time to listen.

MR. SILVA: Thank you.

Phyllis Papen.

MS. PAPEN: Good morning. My name is Phyllis
Papen, and I am speaking here today on behalf of the
City of Signal Hill.

I want to thank the Board for the opportunity
to comment today. First, I would like to thank the
State Board and staff for the recent progress on the
State's 303(d) list.

During the preparation of the 2002 303(d)
list, State Board staff reviewed and analyzed the
recommendations submitted by the Regional Boards and
their staffs. This was a good start at scrutinizing the
technical and scientific support used by the Regional
Boards for the listing and delisting.

Further, we strongly support the State Board's
goal of establishing a standardized approach for
assigning water bodies to the State's 303 list.

We endorse the inclusion of requirements for
data quality and quantity, requirements for consistent
and statistically valid data evaluations, and
implementation provisions. The inclusion of such
requirements would immediately improve the scientific
merit of a 303(d) list.

Further, we strongly support the inclusion of
a planning/monitoring list. The draft December 2003
listing policy removed the planning and monitoring list,
which were in the July draft policy. A planning and
monitoring list, or a watch list, is important for cases
where the impairments are undetermined; for example,
unknown toxicity, cases where data are insufficient to
determine if an impairment exist, and in cases where
water quality standards may be inappropriate.

Water bodies placed on the planning and
monitoring list would need to be studied further. They
could be placed on the 303(d) list of impaired or not
listed as not impaired. Use of a watch list has been
strongly recommended by the National Academy of Sciences in its report to Congress, and it would help avoid inappropriate listings, unnecessary TMDLs, and unwise use of resources.

The City of Signal Hill is also concerned with provisions in the draft policy which will allow listings based on pool data. As written in the December draft policy, a segment of water body could be placed on the 303(d) list if just one sample from that segment reaches water quality criteria and samples in adjacent segments exceeded criteria. We request that the draft policy be amended so that each water segment is required to be evaluated independently, which is a much more accurate indication of actual water conditions.

Further, to ensure development of TMDLs were appropriate and necessary, we specifically request that the Board require a reevaluation of each water body carried forward from the 1998 303(d) list. Many listings from the 1998 303(d) list may be inappropriate because of inadequate data quantity or quality, evidence that natural sources have caused or contributed to the impairment. Water quality standards upon which listings are based are inappropriate. This recommendation is consistent with the July 2003 draft policy that insists on prioritizing water and State and local resources.
Finally, the City of Signal Hill continues to be concerned that the Los Angeles River estuary has several listings related to historic use of pesticides and lubricants. Among these are chlordane, DVT, lead, PCPs, and zinc. These are all listed because of presence in sediment.

Instead of being listed, they should be placed on a watch list. It would appear to be impossible to establish a traditional TMDL for legacy pollutants no longer in use such as chlordane and DVT and PCPs. Some other mechanisms should be used to deal with such conditions. Such historic pollutants cannot be controlled by controlling current discharges.

We want to also support the comments of the Coalition for Practical Regulation given by Richard Watson, and thank you for the opportunity to speak today.

MR. SILVA: Thank you.

Larry McKenney.

MR. MCKENNEY: My name is Larry McKenney from the County of Orange, and I am here representing the Orange County Flood Control District in our 34 cities.

And I hesitate to even suggest that I can add to anything. So rather than going through any specific comments, I just want to make one suggestion
specifically to you, the Board members, for your
thinking as you hear all of these comments and then
later when you're evaluating what staff does with all of
this; and that is that these questions of whether there
should be multiple lists or whether there can be
subcategories under the list, that's an important
question, and also the question of the reevaluation
procedure.

In my mind, the most important thing to
remember in looking at how both of those issues get
worked out is that the 303(d) -- Section 303(d) of the
Clean Water Act is not intended to be the way that water
quality gets protected despite the rest of the Clean
Water Act. It's intended to be one piece of the overall
program that the Clean Water Act created, and its
biggest value is in identifying high-priority problems
and prioritizing the effort to solve them.

When the implementation of 303(d) results in
so many water bodies being listed that we have decades
of backlog, then the system has failed to use it as a
prioritization tool. So however we resolve the issues
of the multiple lists or sublists and how existing lists
are reevaluated, to me the key policy consideration is
the process has to work as a way of prioritizing the
highest priority issues.
Thank you very much for coming. Thanks for being here and the staff's excellent work.

MR. SILVA: Thank you.

We're done with the cards that we received, so what I would like to do is take a quick break and let the reporter take a short break for maybe about ten minutes or so. We will come back at 10:25 and we will resume. Thank you.

(Recess.)

MR. SILVA: Why don't we get started. We did miss one of the city reps, Gerald Greene.

MR. GREENE: I apologize. I didn't want to be redundant with the other speakers. Thank you again for coming down.

And I would like to reiterate, like the other agency speakers, that finally as to both new issues, I wanted to reiterate some of the challenges in dealing with analytical chemistry that pops up. Essentially we are concerned about how these new rules interact with things like CTR, when we have seen past listings based on very, very low and unusual hardness levels that perhaps -- I'm sorry. I should be clear. CTR listings for metals that are interacting with very, very low hardness measurements that are essentially atypical and require the CTR to be extrapolated beyond what is
represented in CTR documents at the level of, like, two parts per million hardness when the CTR tables stop at 25.

Also, in regards to the chemistry issue, there are exceptions that pop up. And it's not a perfect science, and we are trying to deal with the field issues that result in data that's occasionally not what we expect.

Recently we saw dissolved oxygen levels that were three times the saturation limit in a water system. That implies that there has been a challenge in the results that were coming out, how that legal chemistry is worked out for us. So we appreciate that the Regional Board would take those kinds of analytical anomalies essentially into consideration.

Again, thank you very much, and we appreciate your coming down today.

MR. SILVA: Thank you.

Robin Rierdan.

MS. RIERDAN: Hi. My name is Robin Rierdan, and I am here because I am a concerned citizen and mother. I am new to this process, so I hope you will forgive some of the lack of the knowledge that I may have, but I want you to know that my comments come from my heart.

I am here because I am concerned about this
listing process, and I am concerned about the delisting process. It seems that every speaker we've had today is really, behind all of their techno-speak and bureau-babble, begging for relief from this listing process. And I am very concerned about that.

My understanding of the State Water Regional Control Board was that your job was to maintain water quality and protect water quality for the people of California, for its wildlife, for its children, and for all of the people of this state. And when I listen to this delisting process, I get concerned that we won't be able to protect this water, and nor will we be able to improve this water.

And that's a worry. That's a worry because people in this state use this water all of the time. Most people know that it's not clean. Most people know you shouldn't go near it, and most people know you shouldn't touch it, and most people know you shouldn't let your children near it. But some people don't.

I was in -- not Riverside -- Bakersfield this summer and watched hundreds of what I suspected were poor migrant workers in a river swimming in it on a Sunday afternoon when it was so hot. I mean, no one should have been in that water. Not a soul should have been in that water and not a child should have been in
that water, but yet they were swimming in that water.

And I am concerned through this process that the water that they were swimming in will never be listed and, as a consequence, will never be clean. That is a very troublesome thought to me.

So as you go through this process and you listen to all of these cities who feel completely overburdened by the costs of cleaning the water and by the vagaries of this listing standard or that listing standard, I would ask you to remember the children of this community and the families that use this water and the fishermen who are not smart enough not to eat their catch, the people swimming in the bay who don't know that swimming near an outfall is not a good thing to do. They're there, and they do it all the time.

I was listening to the gentleman from Dominguez Creek saying -- Dominguez channel saying, "I don't know why we should even bother with any of these channels. There's no beneficial uses." And I thought maybe we should create a new beneficial standard that is no beneficial use, open sewer, and we don't have to do anything with the water in that. But then I remembered that that water always ends up in the ocean, somebody fishes in it, somebody swims in it. Not a good thing.

So I guess what I am asking you is as you go
through this process of listing and delisting, trying to
decide what to do with the regulatory burden that people
are saying is being placed on them, I would like you to
think about this: that if a water body gets delisted, I
am thinking about printing up 1,000 signs that I am
going to be putting on water bodies that get delisted,
and it's going to say, "State Board says this water is
safe to swim in, fish in, and drink." Because when you
delist it, I think that's effectively what you are
telling the people of this state. I don't think that
would make the public health department happy. I don't
think it would make the medical community happy.

And I really think that you are all moral and
ethical people and understand the great responsibility
that you carry. So I ask you to think very, very
carefully as you go through this process and remember
that you are not here just to represent the cities who
feel overburdened or the industries that feel
overburdened; you're here to represent people who really
don't have the knowledge to speak for themselves, people
who you'll never see, people who you'll never know. But
you will know that they are there because they are just
the faceless, nameless people of California. Thank you.

MR. SILVA: Thank you.

Mark Gold.
MR. GOLD: My name is Dr. Mark Gold. I am the executive director of the group Heal The Bay, and we have a presentation that should last about half an hour or so from the environmental community.

First off, we would like to say right off the bat that we support the testimony given last week by members of the pact, and what you are going to get today is mostly an overview of our comments and a great deal in more specificity will be in the letter submitted by the 18th. So I just want to make sure that you got that.

I also wanted to state that we support the bulk of EPA's comments that were given last week as well. We were very happy to see that we see eye to eye with them on most of the issues and concerns that they had on the listing and delisting process as well.

Our goal at Heal The Bay is to see more certainty in the listing and delisting process, which could be obtained through a more rigorous and better document listing process. And we believe that the State's effort to date is definitely a start to move in that direction, but not even close to where we need to go to adequately protect water quality in the State of California.

I am going to go over some of the top issues
that our organization has. But like I said, it's not a complete list in that one of our concerns is that all too often the current approach results in sort of an approach of when in doubt, take it out, or don't list the water body at all.

And one example that I heard, that this is much better than a watch list approach, which will never lead to a cleanup, I can't imagine any approach where anything on a watch list would actually get cleaned up.

Looking at the statistical approach that was used to list, we believe this needs to be modified. The current approach will be failure to list impaired water bodies. We understand there needs to be a mechanism that allows for uncertainty and variability and error.

The three levels of safety margins built in to ensure clean waters are not listed is the approach through the binomial approach. And what you see is -- the result is overcompensation that will lead to a failure to list truly impaired waters.

So, for example, you have 10 percent allowable exceedance plus a confidence variable of 90 percent plus a null hypothesis that starts with the assumption that the water is clean. So you're building on this level of uncertainty with the end result being less water quality protection.
So the overall result, if you stack them together, the safety margin, to protect against listing clean waters, is allowing them more than a 10 percent exceedance rate. Instead, as high as a 30 percent exceedance rate is allowed on -- and even with a very robust sample size of 100, the allowable exceedance rate is as high as 15 percent. So that is a major problem.

We strongly urge the Board to correct this problem. First and foremost, if the binomial approach is used, the setup, the model should be changed to ensure the polluted waters are listed. In other words, flip the null hypothesis to ensure with a confidence limit that the water body is clean before deciding not to list, not the other way around as it is right now.

Another alternative that might be looked at is to consider using a simpler approach that doesn't assume a 10 percent exceedance rate in order to counter for variability, uncertainty, and error.

For example, a simple T test in which the amino samples compared to the standard with a certain confidence limit can be used and would account for variability, uncertainty, and error.

And the sorts of questions that would be asked in that statistical approach is did this group of samples exceed the standard with X confidence? Or
flipping it around, did this group of samples meet the standards with X confidence? So that's a different approach that doesn't saddle you with the arbitrary 10 percent as you have right now.

On the second major area, that is the requirement that the pollutant or pollutants that cause, observe toxicity or another biological response must be identified before a water body can be listed or a TMDL can be developed, this must be removed from the document. The requirement will totally create a backstop on cleaning up the most polluted waters in California.

The overall result of this requirement will be that water bodies exhibiting the most severe impact such as toxicity, adverse biological response, and degradation of biological population communities will be difficult, if not absolutely impossible, to lift because the pollutants that are causing these impacts must be identified. And as we all know, it's not that easy to do that. In addition, water bodies already listed for this may be delisted, which is a major concern.

This cause and effect link typically cannot be established through simple or standardized tests. Instead, special studies are required. The listing policy is shifting the burden of establishing absolute
cause to the State Regional Boards.

The end result of this policy will be that water bodies shown to have exceed numeric standards through chemical analysis will be easier to list than those water bodies that are exhibiting more severe impacts, which are often caused by low levels of multiple pollutants.

The trend at the federal level on regulation and research is to focus on biological effects and impacts, because the whole point is to protect our water resources, yet this listing policy is leading California in the exact opposite direction.

One thing, I think, that's very critical to point out is that this exact debate has occurred for the last 25 years on the whole 301(h) waiver issue, and that argument made by the dischargers has lost time and time again where if there is impairment, then you must indeed upgrade your facilities. That is what you have seen in 301(h), and that has worked quite well, I think, for the State of California.

On the third major point, delisting policy must establish basic minimum requirements as provided for in the listing policy and must provide much more certainty than there is today. So we recommend a policy clearly that includes the following:
A minimum of three years or more new data must be used in the evaluation for delisting;

Data must be representing conditions that occurred in the water body during the sample period;

To be represented, the following must be considered: sampling frequency, temple of distribution of samples, and more.

Critical conditions -- this is very important -- must be sampled, and this includes a representative number of wet weather samples during varying levels of storm duration intently. You can imagine an approach that doesn't look at critical conditions that would lead you to the wrong outcome.

Also, the policy related to small sample size must be modified as well. The number of samples that exceed a standard threshold for small sample size is not acceptable, and in most cases 25, 30 percent. This will result in a failure to list many impaired water bodies.

So our recommendation in this particular case is best professional judgment. You must consider the number of exceedances and exceedance rates. If there are only three samples but all three exceed, then indeed that should be listed. Also, the magnitude of these exceedances and the severity of the measure you are actually evaluating, toxicity versus a potential
pollutant.

So one example, of course, is a fish kill. If there is a fish kill and it occurs, obviously that's the sort -- and it occurs on a periodic basis -- that's the sort of water body that should be listed, even if there are small sample sizes.

All right. Since we do spend a lot of time on the area of bacteria, we do want to talk a little bit on the delisting policy for bacteria in water. And the key thing here is really the reference approach needs to apply to both listing and delisting. There is a big problem with the existing language that's inconsistent.

For example, let's say a beach is monitored daily during the AB411 time frame for six months. Approximately 180 samples would be collected. According to Table 4.1, 12 samples could exceed on the standards, which means 12 postings or 12 closures, yet the water body could be delisted.

Then, based on the listing provisions, it would immediately be listed again for Santa Monica bay beaches where the reference location requirement is zero days. So it just doesn't make sense. The key thing here is that you need to be consistent in only having a reference-based approach on listing in this particular circumstance. And if you can't use the approach, the
one that was given, the arbitrary 10 percent and
4 percent, is based on data for a five-week period. So
it's certainly not enough to make a regulatory decision.

And then lastly, because I know I have gone
way too long, is that if there is an enforcement
program, then the pollutant can't be listed on the
303(d) list. So that's throughout the document, and
it's very, very confusing in a lot of places. Instead,
it gets put on the enforcement list.

And there are specific examples that talk
about trash that are most troubling, as anything else.
If you have local anti-littering ordinances, for
example, one can interpret that there is no way that
body would be 303(d) listed, regardless of whether or
not there is severe water quality impairment.

And to even take a step further, there would
be no listing if there is any mechanism for enforcement.
So, for example, if you have an MS-4 permit that
requires cleaning and street sweeping, since that is an
enforceable program and you have that NTS permit for
that, this would ensure that no urban receiving waters
would get listed for trash. Clearly, this can't be the
intent of the State Water Resources Control Board in why
you have strongly upheld the trash TMDL impact at times.
And honestly, trash is a major, major impairment issue.
And then on spatial and temporal guidelines, the current ones are completely nonsensical. Right now it says if you have two samples that are collected within 200 meters of each other, it would be considered the same station. And this is really not protective. If you look at the example of beaches where you have a storm drain and then 200 meters away you have open beach, and if you combine those together, basically you would be eliminating many of the violations right in front of the flowing storm drain and the actual pollution source.

The other thing is that most MPDS permit programs are set up where you have the outfall and you're looking at water quality impact as well as the outfall and below the outfall. And if you were to combine those together, that just makes no sense.

And the same sort of approach occurs for spatial distribution where if you collected samples within the same week -- basically they were saying combine them -- then you can imagine for storm water how ridiculous that would be and for beach water quality how silly that would be as well.

With that I would like to pass it forward to Sujatha from Environment California. Thank you.

MS. JAHAGIRDAR: Thank you. My name is Sujatha
Jahagirdar. I work with Environment California, and I would just like to take a few minutes to focus on some of the real world impacts of this proposed guidance policy. I will focus on a lot of the technical issues, but I want to just bring it down to a concrete level and talk about specific waterways that we believe are in danger of dropping off the 303(d) list if this process goes forward.

So the questions that I would like to ask are what types of waterways would never have been listed in the first place if this policy were to be adopted as it is today?

And the second question is what types of waterways will drop off the list if this current criteria is applied to waterways that are already on the 303(d) list?

And the answer to those questions is that the impact will be that real waterways that are part of communities that are part of the fabric of this state that people fish in, swim in, and reply upon to escape the hustle and bustle of their daily lives will never be cleaned up.

And specifically I would like to talk about a few examples. The first is San Antonio Creek. And San Antonio Creek is a small little waterway that runs
through the center of Ojai in Ventura County, and it's a beautiful creek. There is a park around it in Ojai itself, and then as it exits the city, it runs into agricultural land where it runs through orchards of avocado trees and orange trees, and it's seen as central to the identity of this part of Ventura County so much so that the Ventura Stream Team adopted this creek as a waterway that they want to go ahead and protect.

And they wanted to protect it not only for its aesthetic value and as a place of refuge for the community, but also because it's home to the unarmored three spike stickleback, which is an endangered species that was put on the federal endangered species list in 1970.

And so through the testing that the Ventura Stream Team did, they were able to identify nitrate as a contaminant in the waterway. And what nitrate does is -- it's a product of -- it ends up in waterways mostly through runoff from agricultural lands.

And when it's in water, what it does is it encourages the growth of algae. And when you have lots of algae growing in a waterway, you have a lot of bacteria that feed on the algae which then suck out the oxygen from the waterway. And so in effect what you do when you have a lot of nitrate in a waterway is
suffocate the wildlife that are actually present in the waterway and threaten species like the unarmored three spike stickleback.

So nitrate is a huge problem, and the Ventura Stream Team identified that nitrate was a problem in much greater than 10 percent of the threshold that were originally put on the list. In fact, they found that 4 out of 23 samples demonstrated elevated levels of nitrate above water quality standards.

Unfortunately, however -- and the Los Angeles Regional Water Quality Board acted upon this data and consequently put this waterway on the list. Unfortunately, with this current policy, you would now need 5 of the 23 samples to have listed this waterway in the first place. So San Antonio Creek is the type of waterway that we may see never put on a list in the future or may be threatened if the suggestion from the earlier speakers are taken to reevaluate the list immediately and take out waterways that don't meet the policy.

The second waterway I would like to highlight is the San Gabriel River, its listing for zinc. The San Gabriel River runs through East Los Angeles. It's one of the few common threads that we have of this massive sprawling county that actually ties together
dozens and dozens of cities and communities.

And the San Gabriel River, unlike the Los Angeles River, actually is aesthetically and culturally a resource because it hasn't been completely channelized. So you a lot of soft bottom areas of this waterway already, and we have seen a massive -- in recent years, a massive movement to revitalize the river even more.

So at the federal level you -- Congresswoman Hilda Felice (phonetic) just got a law passed that would study the river for the possibility of it becoming a national park. And also, various communities are going forward with initiatives to put pocket parks along the river with the ultimate vision being to create a greenway throughout the entire region of Los Angeles around this waterway.

And so again, because it's such a community resource, volunteers went ahead and sampled the waterway for contamination and found elevated levels of zinc. They found 4 out of 26 samples contained zinc at dangerous levels. And zinc is a toxin. It poisons aquatic wildlife.

And, unfortunately, though, under this particular -- under the proposed guidance policy, you would need six samples of zinc exceedances to meet the
requirements of the binomial approach. So again, we have an example of a waterway that is clearly contaminated, has a lot of community investment, yet it would never have been put on the list to get cleaned up in the first place and is in danger of falling off the list if the suggested revisions are implemented.

And then finally, the last waterway I would like to highlight -- and I would like to also emphasize that these are just poster children that we were able to pull out from just a quick perusal of the list. I don't pretend to be a techie. We believe that there are dozens and dozens and dozens of more waterways that are at risk, but I thought it was important to highlight what we were able to pull out just by a cursory glance.

And the third and final waterway that I'd like to talk about is Coyote Creek. And Coyote Creek for me anyway, when I was looking at these waterways -- and it's as much an issue of protecting specific wildlife and habitat, but it's more an issue of the community and the resources that it has invested in this waterway.

Coyote Creek runs in the northern part of Orange County, and it's a major part of the local economic fabric. It actually supplies water and is part of the aesthetic environment of one of the most famous golf courses in Southern California. It was a golf
course designed by Jack Nicklaus, and it's a major part of the local economy.

This facility is largely dependent on maintaining a beautiful, aesthetically-pleasing, clean waterway that runs through it, and Coyote Creek was listed under the 2002 process for selenium contamination with 5 samples out of 26 exceeding. Unfortunately, if they were under the proposed policy, you would have needed 6 samples to list it.

So again, Coyote Creek would never have been on this list, and selenium would never have been identified as a problem, and you would have a selenium contaminated waterway running through one of the region's most famous golf courses.

So in closing, I would just like to emphasize that when we're talking about this policy, what we really are talking about are very concrete waterways that are in jeopardy of falling off the 303(d) list. And what this means is a very real impact to communities and to the local economy, and I would urge you to look with great care at the suggestions of my colleagues in making your final determinations. Thanks.

MR. SILVA: Thank you.

And I would request that you keep it closer to five minutes. Most of you have been going about ten or
so. If you have similar comments, just say you agree
with the comments.

MR. WILSON: Thank you. My name is Rick Wilson. I
am the coastal management coordinator with the Surfrider
Foundation national headquarters in San Clemente.

Surfrider believes that the proposed policy is
not consistent with the use of the precautionary
principle. In fact, it's almost the reverse. As was
stated before, it seems like the way that it's worded in
several places is to when in doubt, throw out the data.
You know, when in doubt, don't list or delist. And it
also seems to encourage not testing, dischargers not
testing. Because if they don't have enough data, the
criteria and the policy won't allow a waterway to be
listed, or it would cause a waterway to be delisted.

Specifically, one of the instances that we're
concerned about is the requirement for five exceedances
to list a water body, and we believe there are several
instances when the existing data, even though it's not a
lot of data, clearly indicates that there is a problem,
and the water body would not be listed.

There are places where the data -- there are
literally 100 percent of the data, three or four
samples, show exceedances and the water body would not be
listed. It does not allow for what Mark Gold referred
to as best professional judgment to be used in listing such water bodies.

Just one example of a water body that might be the case is Dana Point Harbor. Dana Point Harbor is currently listed for copper, but there is very limited data.

However, it's clear to us -- and I think anybody who looks at the situation and there is a reason that it's reasonable to be listed, it's very well known that copper is a major problem causing contamination in harbors and marinas. And so to not list Dana Point Harbor for copper would not make sense. It would not be consistent with the precautionary principle, and it would not be consistent with best professional judgment.

The only other comment I wanted to make had to do with the toxicity. We are strongly in favor of keeping the requirement to list bodies due to toxicity testing exceedances, even in cases where a pollutant is not identified.

There are clearly cases where there are fish deals where there are high mortality and toxicity testing where there is a problem with a water body and it should be tested. That doesn't preclude, and it should include additional testing to identify the pollutant, but that doesn't mean that the body should
not be listed for toxicity. So we encourage you to keep that requirement in the listing procedures.

Thank you.

MR. SILVA: Thank you.

MS. SOLMEN: Hello. Thank you for the opportunity to speak with you today on this important issue. My name is Gabriel Solmen. I am an associate attorney at San Diego Baykeeper, and San Diego Baykeeper is a nonprofit organization committed to water quality protection throughout the State. Our purpose is to preserve, enhance, and protect the state's coastal estuaries, wetlands, bays, and other waterways from illegal dumping, toxic discharges, and habitat degradation.

And as a San Diego resident and a clean water advocate, I am concerned about this draft guidance. We have worked hard through San Diego Baykeeper to work with regulators and the community to identify these impaired waters, and we are making great strides through the TMDL programs to clean up these areas.

And my concern, like those before me, is that some of these current waters would not have been listed under this draft policy. And I will just give you a few examples from Region 9 for that.

One, as we have just mentioned, Dana Point
Harbor is listed for copper. And the problem there is that the sampling that was done was done during a storm event. But even though we know that the copper is coming from the boat hauls and it's becoming persistent in the harbor, because the samples were done during a storm event, they would not be looked at for the draft guidance. And so if the source of the problem is clear and ongoing, as it is in so many harbors and marinas, why should the timing of the sampling that was done prevent the harbor from being listed?

Second is the San Louis River, which was listed for cordite. And over four years, the river was sampled 31 times with 21 exceedances, which is severe. But under the draft guidelines, the river would be clearly listed if all of these samples were done at the same time. But since they were done over four years, three samples here, four samples there, it becomes unclear whether you can accumulate over the years. The draft guidelines are silent. I can't find any clear guidance there.

And if you look just on the San Louis River until the last year of the data, four samples were taken, and all four exceeded the standard. Clearly something has gone on there; but under the draft guidelines, the river would not be listed.
And then I will just tell you about Lake Hodges, which is currently listed for pollar (phonetic). And again, you have the same issue. Although the lake has 100 percent exceedances every time it's measured, at least from '98 to 2000, it would not listed under the draft guidelines. And the problem there again is the sample sizes are too small to be counted under the binomial model. So even though we know that there is a consistent problem there, it would not have been listed.

So I just offered these examples as evidence that the draft guidance policy doesn't always track common sense or real life experience, and I urge you to remove the confusion and rigidity from the language in the draft guidelines. Thank you.

MS. SUTLEY: I have a question before you step down. Under 3.1.11, the alternative data evaluation, do you have a comment on whether that would overcome some of the issues you and some of the previous speakers have raised, or do you have any comment on that section?

MS. SOLMEN: Yeah. Absolutely. And perhaps I am not the best person to speak to this, and I think that other speakers can comment on this, but one thing is that the requirements for the ADE are relatively unclear. And I think that for some of the requirements,
we get into problems with the binomial model. So I don't think that it's a complete solution.

MR. PARADIS: I am Dave Paradis. I think I will change things around a little bit and tell you where she left off. Let's talk for a moment about the relationship between the binomial approach, a one-size fits-all hypothesis test. Okay? Science doesn't always rely upon hypothesis testing to make decisions. Quite frequently you need multiple lines of evidence. We heard one earlier that dissolved oxygen alone was inappropriate from making a nutrient determination.

If we looked at Table 3.1 in the sample counts here, your statewide monitoring program is making wonderful progress on standardizing quality assurance and on standardizing methods for the first time in the State of California, but it does not have the resources to come anywhere near the sample counts in Table 3.1.

Typically they measure conventional water quality once a month, typically toxics and metals and the like, and toxicity, if measured at all, takes place once or twice a year. So normally we could take a year of sampling, have a few months of having nitrate, high phosphate, high chlorophyll, load me up, I may never meet these sampling requirements.

So I go over to the next procedure, which is
Section 3.1.11, and I begin to try to use this as the way to use scientific knowledge that any scientist would look at. But I get to this, and it says at a minimum the justification must demonstrate, and then I get to that measurements can be analyzed using a scientifically defensible procedure that provides an equivalent level of confidence as the listing factors in Section 3.1 and tests the null hypothesis that water quality standards are attained.

Quite frankly, I didn't come here -- I came here because I wasn't testing a hypothesis, and I have been precluded from using the alternative data section because it requires me to test a hypothesis when I have five or six different things that are telling me that this water is impaired such as high nitrate, high phosphate, high chlorophyll, and there are dying fish gasping for a breath.

I am not in this to test a hypothesis. Particularly, I have real world examples where that condition actually exists and there are five or six other streams where we have already seen those things, but I am unable to list this water body because I am unable to apply the multiple lines of supporting evidence.

Again, in the alternative data analysis, that
kind of demonstration is one of the principal reasons
you find Regional Boards themselves who have to use this
information, raising objections about this policy.
There needs to be -- while I hear the regulator
community say they feel that this is nebulous, I think
that Regional Board staff and the environmental
community feel as though there must be room for more
scientific method on this thing. Hypothesis testing is
not the only science applied to water quality.

In another less technical area, we hear talk
of multiple lists. I think that most of us in the
environmental community feel as though this draft of the
policy is much improved over the previous one because
there are less lists.

In fact, there are two lists, one on which
largely goes unnoticed. The Clean Water Act requires
that you make a 305(b) list and a 303(d) list. Nobody
in this room is talking about 305(b). 305(b) is
effectively this planning list, this watch list. The
downside of trying to create each of these other lists
is that Regional Board staff time has to be spent
jumping through administrative hoops to prove a program
is enforceable or to establish yet more criteria. The
fact is 305(b), the statewide water quality assessment,
is required.
Establishing a planning list or a monitoring list in particular, we have SWAMP that is working statewide. It's an amnio monitoring program encouraged by the legislature to be established and so forth. That program has very finite resources. It can't be an amnio monitoring program and effectively cover the State of California if it is redirected whenever someone finds a problem.

If there were no monitoring list, you might more aptly title it the Section 5267 list, because it's the only place you're going to get the resources to get the sample counts. I don't think the dischargers would find that pleasant, and I don't think it's scientifically necessary to do things like collect 500 samples, for example, of nitrate in a stream. You don't need anywhere near those sample counts to understand what is going on in the water.

In this other area that we have heard some comments on today regarding necessity of identifying the specific pollutant associated with toxicity, I can appreciate some of the regulated community's concerns because that specific pollutant may have economic consequences for them. But there is another side of the coin, and this policy must work on a statewide level.

I have been working on the AG waiver program
and have made some new friends, and I happened to have
met a fifth generation family farmer up in the Salinas
Valley who cares about water quality. This policy says
if that water in the stream is toxic, he's got to -- you
know, somebody has got to ID the pollutant, most likely
him because there is no money within the State to do it.

So that means he will have conduct TIEs,
toxicity identification evaluations. These things cost
about 4 grand a piece. So if you want to do two or
three of them, make sure you're right. So at $12,000,
you're committed to identifying the specific pollutant.

Well, thank God this policy wasn't in effect
last year. He put a retention basin in. It doesn't
even reach the stream anymore, and he dug a really
good-sized hole for 11 grand. This policy is going to
make him standard in a lab instead of on the ground.

That kind of breach of common sense and the
absence for the flexibility of the Regional Boards to
apply that common sense still does exist in this
document. I understand it's a difficult process to
serve the needs of the entire state and the needs of the
dischargers and the water quality, but you have to take
into consideration those kinds of economic realities as
well.

I guess in closing, just maybe one more
concluding remark regarding the binomial approach. I have seen these bottled waters here. Let's say Company A does testing on that bottled water there. And they test the water, and when they're 90 percent sure it's clean, they put the cap on it and give it to you drink.

Company B over here tests the water, and if they're not 90 percent certain that it's toxic, they put the water in the bottle and put the cap on it and give it to you to drink. The policy and its use of the binomial as written is a Company B approach.

In closing, I hope that you will remember and really put some thought into the Regional Board staff comments that nine Regional Board TMDLs have had problems with this. As some of you heard at the last workshop, the United States Environmental Protection Agency has some problems with this.

From a practical standpoint, if the workers on the ground have trouble and if the people who are ultimately going to approve or disapprove of the list have trouble, those things really ought to be reconciled before a final draft can be done here. Presently the EPA will make its own policy if this policy isn't set up in a fashion that's acceptable to them.

So these entire several years that we have
spent may well end up for naught unless the Board finds a way to make this policy consistent with the EPA and the Regional Board staff. Thank you very much.

MR. SILVA: Thank you.

MR. EVERETT: Conner Everett, executive director of the Southern California Watershed Alliance.

I would like first to thank you and staff for all of the efforts that have gone into this process, for we have worked to try to achieve a consensus. I realize here that we have brought up a lot of issues we have. I would really commend the effort that has got us to this point and say that we're not just saying what is wrong with this process but specific areas that we think can be improved and that we will come up with alternatives, and I thank you for extending the time for that as a group.

I also want to thank people who came with some very specific Southern California perspectives. You know, we have potentially five Regional Water Control Boards that influence this area in Southern California, and I'd add that we have a very different set of circumstances than other areas.

However, as I appreciate Robin Rierdan's comments who comes from the inland area of the San Diego River, our rivers and creeks, even when they are
channelized, especially when they have soft bottoms, are used by children. I have been fishing in the LA River. When I was a child, I caught salmon and steelhead, not as my grandfather did in all of the rivers of Southern California, but they were still remaining in rivers all the way down to the Mexican border. It's not like everything is beyond saving at this point.

The mention of Ojai where I was present at the Ojai Basin Groundwater Agency and the San Antonio Creek, which runs right through the center of town and a park was built around it, most notably for its tennis tournament, once had a cow get stuck right in the tunnel of what's underneath town. That built up all kinds of problems obviously, and since then they have a detention basin upstream to try and deal with that. I just wanted to point out that there are some practical points here.

There are also some very proactive solutions to some of these programs. I live in Santa Monica which has its dry weather storm water treatment plan built as an art project right next to the Santa Monica pier which captures what was the runoff which created a pollution hot spot for children playing in the water and the lagoon just short of the Santa Monica muscle beach area and the ocean. That is now cleaned up. That water is used for -- and it's kind of a process that you can walk
through and see it. It's used for irrigation, and it keeps the water clean at the beach.

These kinds of proactive approaches need to be used by the cities of the dischargers rather than spending the time which, we feel, is asking to go back. We hope you're not going back to the '98 listing. We hope that at this point we're going to go forward with this process and really make it work for everybody across the area.

I have heard certainly of the precautionary principle which was brought up. I notice there are three consensus items on page 5 of the document that talk about the issue of transparency, but also to do active outreach in diverse geographic areas. They are very much apparent in Southern California, especially across the urban areas where the value of park land -- and if it isn't existing park land, people are getting into these streams and rivers as they did in 17 lakes many years ago and using any available water, whether that water is considered drinking water or not.

So I think, really, the stakes are too high not to consider the pollutants here. I am sure we have many questions, including some of the legalities. I do not want to say we haven't appreciated all of the time and effort of those of us that were on the pact and
worked on this.

We are looking at specific issues like the alternative data evaluation and are we going to have two tracks available within these areas and the LA River? Is water chemistry going to allow us to do that? We don't think so. I am talking to people about doing that.

And finally, I want to say because you're here in Southern California especially, we got off on an offramp by mistake driving down here. I picked up some people at the train station, and it's a lot harder to get back on once you've gotten off of an offramp, and I appreciate the time and effort that you have come here to Southern California and did the outreach.

I hope our comments by the 18th -- it will probably be on the day of the 18th -- will fill in all of these because I have learned a lot from this process, and I appreciate it very much. Thank you.

MR. SILVA: Thank you.

MR. EVERETT: And I could have just gotten up and said I am in agreement with all of the statements said here before me.

MR. SILVA: I guessed that.

Okay. That's all of the cards I have. Anybody else that we missed or did not fill out a card?
If not, I want to thank everybody for coming here. I realize -- I have been on this for a while, and I have to tell you we're back to the same issues, the issue of how many lists we have and the methodologies of how you get on and off the list. It has been a long haul, and we will see what the comments say and what the Board's pleasure is in terms of all of these very tough issues.

And to be honest with you, we're not going to make everybody happy. We know that. We are just going to try to do the best that we can.

And I think Nancy has something to say.

MS. SUTLEY: We look forward to your written comments, and be as specific as you can be. That would be helpful.

MR. SILVA: Thank you very much for attending. And once again, you have until the 18th for written comments.

(The proceedings were concluded at 12:20 p.m.)
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, KATHRYN L. MAUTZ, CSR No. 11539, do hereby certify:

That said transcript was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter transcribed by computer under my direction and supervision, and I hereby certify the foregoing transcript is a true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this    20th day of February, 2004.

KATHRYN L. MAUTZ, CSR No. 11539
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In re: Public Hearing for Water Quality Control Board

Transcript of Proceedings, February 5, 2004
HEARD BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In re:
Public Hearing for Water Quality Control Policy for Developing California Clean Water Act Section 303(d) List and Draft Functional Equivalent Document

TRANSCRIPT OF PROCEEDINGS, taken on behalf of the State Water Resources Control Board, at 3330 Civic Center Drive, Torrance, California, on Thursday, February 5, 2004, before
Kathryn L. Maute, CDR No. 11539, RPR.

Reported by: Kathryn L. Maute, CDR No. 11539, RPR

Torrance, California; Thursday, February 5, 2004
10:05 a.m.

Mr. Silva: Okay. Good morning, everybody. Why can't we get started?

First of all, thanks to everybody for coming out and for providing us your comments. With us this morning is my colleague, Nancy Sutley, from the State Water Board, and I will do the official introduction.

This is the time and place for a public hearing by the State Water Board regarding the proposed water quality control policy. We're developing California's Clean Water Act Section 303(d) list. This is the second of two public hearings on the draft policy. The first public hearing was held on January 28, 2004, in Sacramento.

I am Peter Silva, a member of the State Board and today's hearing officer.

I would like to also introduce the staff who are here responsible for the 303(d) list activities and will be assisting the Board during this hearing. From the division of Water Quality, we have Craig J. Wilson, and I think most of you know, Patricia Gouveia, Nanci Levy, and Laura Sharpe, and also chief counsel Michael Levy.

California Water Code Section 1319.3(a) requires the State Water Board to develop guidelines describing the process by which the State Board and the Regional Water Quality Control Boards shall comply with the listing requirements of the Clean Water Act Section 303(d) list. The policy will ultimately establish a standardized approach for developing the California Section 303(d) list.

This hearing is being held to solicit comments on the proposed policy's recommended procedures. We're evaluating information solicited in support of listing or delisting county water bodies for the list. The policy addresses prioritization of listed water bodies for eventual development and implementation of TMDLs.

The State Board staff has prepared a final -- a functional equivalent document for the proposed policy in compliance with the California Environmental Quality Act. The FED presents an analysis of the environmental issues and alternatives to be considered by the State Board in adopting the proposed policy.

In today's hearing, the order of procedure will be a brief staff presentation, followed by testimony from interested parties. If you haven't already done so, if you want to speak, please fill out a blue card. We will also -- if you'd like, we also want to receive written comments regarding the proposed policy.

The hearing will now be conducted in accordance with the technical rules of evidence. Testimony as reasonably related to the proposed policy will be in evidence. Written and oral comments are all part of the record.

At today's proceedings, oral presentations will be limited to no more than five minutes. If you could, before you begin your testimony, identify yourself by name and address for the court reporter.

And if any of you have any business cards, that would also be helpful. If the speaker before you has addressed your concern, please state your agreement and do not repeat the testimony.

The record will remain open. I want to point out that it has been moved back to February 18, 2004.

It was originally February 11th. Following the close of the record, State Board staff will review and respond to all comments in writing. Written responses will be included in the final FED with a revised policy as necessary.

Staff will make the revised policy available to interested parties at least 15 days before consideration by the Board. Interested parties should notify the date and place of future Board workshops and Board meetings where the proposed policy will be considered for adoption.

That concludes my opening statement, and I think Craig will give a speech.

Mr. Wilson: Good morning, Mr. Silva, Ms. Butler.

My name is Craig J. Wilson. I am chief of the TMDL Listing Unit in the Division of Water Quality of the State Water Resources Control Board.

I would like to begin my presentation with a brief overview of the Section 303(d) requirements and the process that led to the development of the policy.

Then I will go, very briefly, into describing the documents that are the subject of this hearing. Section 303(d) and the accompanying federal regulations require states to regularly identify water bodies that cannot achieve applicable water quality standards after certain technology-based controls have been implemented.

In complying, California has developed successive lists of water bodies that are not meeting water quality standards by any league since 1986. After 1996, public attention increasingly...
1. focused on an important consequence of the
2. Section 303(d) listing, or the development and
3. implementation of total maximum daily loads, or TMDLs.
4. Scientifically, publicly demand for regional
5. consistency and transparency in the listing process
6. intensification. In response, the Nator Code now requires
7. the State Board to prepare guidelines for listing and
8. delisting of water bodies on the Section 303(d) list.
9. The guidelines, outcomes, and draft policy, provide consistent, transparent approaches for
10. the identification of water quality limited segments
11. using a standard set of tools and principles to evaluate
data. It also provides for a scientifically defensible
12. approach to address the identification of waters on the
13. list, and it provides a transparent public process.
14. State board regulations independently require
15. that an environmental review equivalent to the
16. California Environmental Quality Act, or CEQA document,
17. accompany policies proposed for State Board adoption.
18. State Board staff has developed a functional
19. equivalent document, or FED, that contains, as required
20. by those regulations, a brief description of reasonable
21. alternatives to and mitigation measures for the proposed
22. activity.
23. The purpose of the FED is to present

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1. alternatives in State Board staff recommendations where
2. the policy may guide the development of the
3. Section 303(d) list.
4. The FED identifies eight main issues: first,
5. the scope of the policy; second, the structure of the
6. Section 303(d) lists; third, the weight of evidence for
7. listing and delisting; fourth, listing and delisting
8. with single lines of evidence; fifth, listing and
delisting with multiple lines of evidence; sixth,
9. statistical evaluation of numeric water quality data;
10. seven, policy implementation; and lastly, the eighth
11. point is the TNM priority ranking and completion
12. schedule.
13. The 2001 Budget Act supplemental report
14. requires the use of a weight of evidence approach in
15. developing a policy and criteria that ensures that data
16. and information used are accurate and verifiable.
17. These guidelines, contained within the draft policy,
18. contains -- a weight of evidence approach that uses
19. single and multiple lines of evidence, alternate data
20. analysis procedures, and the option for regions to use
21. alternate data exceedance frequencies is establishing
22. this list. The FED also recommends approaches for the
23. evaluation of numeric data consistent with the
24. expression of water quality objectives or precluded

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1. criteria.
2. Lastly, the FED assesses the potential adverse
3. environmental impacts of the proposed policy.
4. In conclusion, the intent of the proposed
5. policy is to provide the Regional Boards with
6. flexibility before listing decisions are made while at
7. the same time providing a listing process that is
8. consistent, transparent, and based on a standard
9. scientifically defensible approach to identify waters
10. for this list.
11. Should the need arise during the hearing, we
12. are prepared to answer any questions you might have
13. regarding the policy or the FED.
14. This concludes my presentation. If you have
15. any questions at this point, I would be happy to answer
16. them. THANK YOU.
17. MR. SILVA: Thank you, Greg.
18. Again, we have got lots of time. I think we
19. have got, like, 15 speakers so far. I think, but I
20. would like for you to keep it within five minutes or
21. so.
22. And again, if people before you have already
23. stated what you wanted to say, please say, "I agree with
24. so-and-so." You will have a chance for written comments
25. also.

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1. So with that, what I would like to do is —
2. the environmental community has asked to go together, so
3. why don't we go through the cities first, city and
4. county cops, and then we will end with the environmental
5. community cops.
6. First we have John Pratt.
7. MR. PRATT: I'm not used to being first. Thank you
8. for the opportunity to speak. My name is John Pratt.
9. I'm a City of Bellflower city council member. Thank you
10. for the opportunity.
11. First, I would like to commend the Board for
12. its stated goal to establish a standardized approach for
13. developing California's 303(d) list. The development of
14. a uniform policy for listing water bodies is an
15. important step to improving the validity of listings.
16. We do, however, have concerns about the December draft
17. policy document.
18. We, as my fellow city council colleague Randy
19. Messer (phonetic) noted in 2002, our city is struggling
20. to meet its permit requirements. We have already
21. shifted thousands of dollars from existing programs and
22. transferred employee hours to help cover the costs of
23. the permit compliance.
24. We are already reducing service levels in
25. several areas in order to pay for strong water programs.

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1. and our staff has projected city expenditures of over
2. $2 million over the next several years in order to meet
3. the requirements in our permit. We are, therefore,
4. mindful of the need to examine the relationship between
5. effectiveness and the cost in storm water quality
6. regulation.
7. We are pleased that during preparation of the
8. 2002 list, you removed the San Gabriel River for ammonia
9. and toxicity and placed the river on the enforceable
10. programs list for these pollutants and that you
11. clarified that the lists for copper and zinc were for
12. dissolved metals only.
13. We also agree with your placing the
14. San Gabriel River estuary on the monitoring list for
15. trash. However, we continue to be concerned that some
16. listings from the 1998 303(d) list were simply carried
17. forward onto the new list without adequate review and
18. explanation.
19. Plus, specific pollutants are causing the
20. various conditions of pollution noted in the 2002 list
21. for the San Gabriel River, including abnormal fish
22. histology, algae, high chlorella count and toxicity.
23. Specific pollutants must be identified before TNMls can
24. be developed. We support the recommendation that these
25. conditions or indicators be placed on a separate list

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1. until specific pollutants are identified.
2. We also continue to believe that the State and
3. Regional Boards need to apply common sense and look at
4. the reality of the San Gabriel River. The portion of
5. the San Gabriel that flows along the eastern edge of
6. Bellflower is a concrete-lined channel. The Los Angeles
7. Regional Water Quality Control Board should review the
8. beneficial uses that it does assign to flood control
9. channels such as the San Gabriel above the estuary.
10. These uses were defined several years ago, and some of
11. them may not be applicable. If they are erroneous, we
12. may have inappropriate listings of impairment.
13. Furthermore, the flows through the low-flow
14. channel in the lower reach of the river above the
15. estuary during most of the year are discharges of
16. treated effluent. If it were not for these flows, the
17. San Gabriel River channel would be dry for most of the
18. year. Certainly the facts should be considered in any
19. evaluation of the beneficial uses and water quality
20. standards adopted for the San Gabriel River.
21. We disagree with the way the staff has
22. structured the 303(d) list in the draft. The
23. enforceable programs list and the TNMls' completed list
24. should remain separate lists, not categories of the
25. 303(d) list. The 303(d) list should be restricted to
Impediments where the pollutants causing the impediments are known and where other enforceable programs are not in effect.

Furthermore, the monitoring and planning lists should not be lost. Perhaps we should go back to a watch list that would incorporate both of these lists and more accurately describe the purpose of the list.

Thank you again for the opportunity to comment today on the draft 303(d) list policy.

MR. SILVA: Thank you.

MR. PRATT: I have a copy here for the clerk here if you would like them.

MR. SILVA: Desi Alvarez.

MR. ALGOREZ: Good morning. My name is Desi Alvarez, and I am here speaking on behalf of the executive advisory committee of the LA County Storm Permit.

I would like to thank you for the opportunity to speak to this matter this morning and say that we appreciate the Board's recognition of the significant level of local interest in this policy and your making yourselves available to hold a hearing here in Los Angeles County.

The executive advisory committee of the IA Permit believes that past, current, and future permit findings and actions in relation to the 303(d) listing and TMDL programs are of significant importance and that the Board's efforts to hear and carefully consider input on this is both laudable and appropriate.

In many respects, the local 1998 and 2002 301(d) listing process appears to border on capriciousness due to listings for pollutants that are unidentified, such as the toxicity in the construction and demolition of new watch lists. Both listings and delistings are based on dubious data and conservative water quality objectives, such as extrapolation CPM standards.

We sincerely certainly hope that the final document will settle much of the confusion that clouds what should be a transparent regulatory process allowing our municipal agencies to concentrate on the most significant issue of water quality issues.

We recommend returning to the multi-list format that appears in prior drafts and, more importantly, was consistent with EPA guidelines and the National Academy of Science report to Congress.

The 1998 and 2002 lists contain impediments based on dubious or inadequate data that was quickly rescinded or shuffled to other lists, other impediments such as toxicity and indicator organism pollutant groups.

We request the monitoring list be reconstructed so that specific controllable pollutants may be identified prior to TMDL preparation. This will ensure the listings will result in solid, predictable actions.

Periodic reevaluation of contaminant listings should be mandatory. New listings should be balanced by delistings due to new data and/or objective achievements.

The statistical methods identified in Issue 6 are probably the most important aspect of this policy document. They have the potential to eliminate the perception that some listings have been set arbitrarily or that delisting is overly onerous and subject to political decisions that cannot be rationally objectively.

With this in mind, we courageously staff to carefully review the descriptions to clarify their meaning to the greatest degree and provide additional language to clarify any analytical concern to the matrix effect, detection quantification limits, and impact of new data about one parameter or another.

The discussion or trend analysis should be expanded, and I am here speaking on behalf of the use of short-term data which may be affected by a hydrological condition, such as drought, as opposed to actual degradation of the water quality. We believe that data from the most recent five to seven years may be more appropriate to avoid impacts of such hydrologic conditions.

Also, the reevaluation of contaminant listings, which was chosen by the TMDL, does not include all that could be considered inappropriate.

Public Works believes that the inclusion of the section that states "For sample populations less than ten with three or more samples, see the evaluation guideline. The segment shall be listed," this statement is inconsistent with Table 3.1, and we request that the State Board address that inconsistency.

Also, with respect to Section 3.1.2, Public Works believes that the dissolved oxygen data may be enough to place the water body on the list or may be used as secondary data for the 303(d) listing, it is inadequate for primitive impairments.

And the concept of transitioning numeric water objectives between adjacent receiving water reaches, which has already risen locally as different conditions discuss this at public forum.

We commend that utilization of pool data from different receiving water areas will resolve any disruption and lead to cases where alternative but technically equivalent data could independently argue for listing and monitoring a new list. So therefore, we would encourage that any policy be relied on as site-specific data as possible.

Thank you very much for the opportunity to make these comments.

MR. SILVA: Thank you.

Next is Carrie Inclong. I apologize for your name. That's -- the hardest part about being a hearing officer is pronouncing names.

MS. INCLONG: For the record, that was the right pronunciation.

My name is Carrie Inclong, like you said. I am with the LA County Department of Public Works. My comments are detailed in a letter that I will be handing over to Mr. Wilson after my talk.

First of all, thank you very much for holding a meeting down here in LA. We really appreciate that.

And let me just jump right in. LA County Public Works believes it is necessary to reevaluate water quality standards and beneficial uses within the reachable basin prior to the listing of additional waters or initiation of TMDL development of waters already listed on the 303(d) list.

Also, Public Works is in favor of the planning list on which waters with some indication of an impairment could be placed, as was discussed in the July 2003 draft.

We also support previous comments already made regarding the inclusion of the reevaluation of each apparent water body on the 2002 303(d) list.

Also, with respect to the water quality limited segment factors section, which states, "For sample populations less than ten with three or more samples, see the evaluation guidelines. The segment shall be listed," this statement is inconsistent with Section 3.1.1.1 and we request that the State Board address that inconsistency.

Also, with respect to Section 3.1.2, Public Works believes that the dissolved oxygen data may be enough to place the water body on the list or may be used as secondary data for the 303(d) listing. It is inadequate for primitive impairments.

Also with respect to Section 3.1.10 of the proposed policy, the trends in the water quality section allow the use of short-term data which may be affected by a hydrological condition, such as drought, as opposed to actual degradation of the water quality. We believe that data from the most recent five to seven years may be more appropriate to avoid impacts of such hydrologic conditions.

Section 3.1.11, alternate data evaluation, appears to allow the listing of a water body using data that would otherwise be considered inappropriate.

Public Works believes that the inclusion of this section, that a listing policy will allow the additional waters on the list which are not just a part of the impaired, we'd request the deletion of this section.

Also, with respect to the language in the policy which states "relatively unimpacted watersheds" and how it relates to recreational uses, we request that there be clarification in the document regarding the term "relatively unimpacted."

Section 6.1, we believe that this is inconsistent with Section 6.2.5.7, which states that only the most recent ten-year periods count.

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Information shall be used for listing and delisting waters. So we would request that that inconsistency be
1. sustainability planner for the City of Santa Clarita. I have provided the business card to the --
2. MR. SILVA: Great.
3. MS. MERENDA: First of all, the City of Santa Clarita would like to commend the State Water Resources Control Board on its phenomenal efforts to provide the time periods for Regional Board and State Board staff from preventing unnecessary listings, and help establish quality data that TMDLs are involved which will reduce the TMDL timeline.
4. Again, we thank you for holding this public hearing to allow everyone an opportunity to participate in developing this process; and by working together, we can all end up with a policy that is both protective and restorative while providing consistent accuracies to the TMDL list. Thank you.
5. MR. SILVA: Thank you.
6. Next is Clayton Yoshida.
7. MR. YOSHIDA: My name is Clayton Yoshida representing the City of Los Angeles Bureau of Sanitation. Thank you very much for the opportunity to submit comments and especially for coming down to this region.
8. MR. SILVA: Thank you.
9. And that concludes my comments. Thanks.

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1. enforcement programs are shown to be effective in our region.
2. A good example is the bay protection cleanup program which takes cases of sediments in our bays and harbors. Such a program can potentially be a viable alternative to the TMDL development in our region.
3. We also request that the policy contain a requirement to review and review old 303(d) listings based on elements specified in the new policy. We recognize that resource limitations may prevent timely review of all of the old listings, but we propose an application process by which the interested public may propose a closer examination of selected water bodies that they're interested in.
4. We also request that --
5. MS. SUTLEY: Can you stop there a second and ask you a question about that with respect to that proposal? Do you want the application process during any time of the normal listing cycle?
6. MR. YOSHIDA: I would say during the normal listing cycle.
7. MS. SUTLEY: Thank you.
8. MR. YOSHIDA: All right. And also, we request that criteria and standards taken from guidance documents used in the decision-making process be promulgated in...
I wanted to speak briefly about one issue, and that is the need for the planning and monitoring lists. We would like to see that restored to the policy. My own experience with it is in the Santa Ana region where there was a listing for unknown toxicity. And in this instance, it resulted in an effort to develop TMDLs. And in one instance, it was for a pollutant that was later determined to not be impacting the water body.

And in another instance, it was based on a threshold number for a pollutant that there had been no water quality standard yet developed; and yet this particular pollutant was actually naturally occurring in the local water body, but the threshold had been determined in alternative water bodies. That resulted in an enormous expenditure of time and resources. Actually what it does is it pulls the TMDL process out of where it belongs, which is water quality standards. Water quality standards are the backbone of the Clean Water Act, and to the extent that the TMDL process is removed from that in terms of there isn't an identified pollutant and there isn't an established criteria for what is the appropriate amount of the pollutant in that water body, then the TMDL process is going to be delayed and take more time and take more money and take more resources.

And as we all know, there is a great deal of TMDLs that need to be done and should be done within the State. As I just want to speak to that. My own personal experience is why I believe that we should be restored to the process, and it will make for a better TMDL process and improve it more importantly, the water quality standards program for the State.

MR. LEVY: Mr. Colston, can you clarify which waters you are referring to in Santa Ana?

MR. COLSTON: I am referring to the Newport Bay listing for toxicity, unknown toxicity.

MR. LEVY: Thank you.

MR. COLSTON: I believe that that list was supported by the National Academy of Sciences report to Congress.

So that's it. Do you have questions?

MR. D'IVA: Thank you.

Richard Watson.

MR. WATSON: I have copies of my testimony which I can pass out.

Good morning. My name is Richard Watson. Today I am before you representing the Coalition for Practical Regulation. I want to thank you, as others have, for this opportunity to comment on the draft listing policy.

I would like to make a few general comments and review a few policy questions and, finally, make a couple of recommendations. We, too, would like to comment to the State Board for making progress in the 303(d) listing process. We enthusiastically support the Board's goal of standardizing listing procedures. The improvements you've made in the 2002 listing process should continue to be improved upon. The 303(d) listing policy is one of the most significant policy positions you'll be making this year. As other people have stated, when water bodies are put on the 303(d) list, then it leads to the requirement for TMDLs.

You will notice the public hearing correctly states that the Section 303(d) list must include water quality limited segments, associated pollutants, any ranking or priority ranking of the waters for the purpose of developing TMDLs in the next two years. So it's pretty clear that you do have to name the pollutants.

The environmental community often refers to the Section 303(d) language as fairly general. We recommend that you look carefully at 40 CFR 130.7, which provides detailed regulations for implementing

Section 303(d).

One observation I made about the existing list, for some reason in 1998 it became more of a list of generally impaired -- a general list of impaired water bodies, not really a focused 303(d) list consistent with 40 CFR 130.7.

In listening to the commentary up in Sacramento through the Internet, I noted that the Regional Board staffs don't want priority ranking and a schedule linked to a list that is appropriate for most impaired waters, but it is not appropriate for those waters where a pollutant has been identified and a TMDL is required. The section I cited requires identification of those waters that will be targeted for development in the next two years. We heard that the 2002 list in relation to the requirements, the 40 CFR 130.7, and will provide a list of these 2002 listings for which pollutants were not identified and we think should be removed from the list.

A couple of policy questions, I think that are involved here and have to be addressed in the FED document. Really, who makes the policy? What are the roles of the State and Regional Boards? Are we to have a standardized scientifically-based list, or are they regional?
quality of our city. We want to be a good neighbor to
the cities around us, and we recognize the importance of
controlling pollution from storm water runoff as a part
of that goal.
However, we are extremely limited in resources
and are struggling to comply with the current permit
requirements, particularly now with regards to the State
budgetary conditions that are currently baffling us.
We do want to do the right thing, and we want to see that
meaningful results come from our expenditures.
We are concerned about the inclusion on the
303(1) lists of generalized listings for specific
pollutants that are not identified.
We are also concerned that the 303(1) list
still contains a legacy of historic pollutants, such as
chloride in PUD's, which should be handled differently:
that the planning and listing lists were included, as in
the July draft policy. That would be one possibility
for observing these legacy pollutants, to see if their
concentrations and possible adverse effects have been
reduced through time. It's just not possible at this
time to make known typically these are not currently
used. The legacy pollutants should be addressed through
some other enforceable program, we believe.
We are also still concerned about the listing
1 of the Dominguez channel for high chloride and for a
2 high chloride count. The Dominguez channel, you know,
is not a body contact recreational facility; it is a
3 flood control channel where no legal recreational use
4 exists. It is unclear to us what, if any, use is being
5 impaired.
6 We recommend that the 303(1) listing policy
7 require reevaluation of water bodies listed on previous
8 303(1) lists. Many previous may be inappropriate
9 because of inadequate data quantity and quality;
evidence that natural sources have caused or contributed
to the impairment; and/overt water quality standards upon
10 which listings are based are inappropriate.
11 We recommend reevaluation of the water bodies
12 to ensure that these are conducted where appropriate and
13 necessary. This recommendation is consistent with the
14 July 2003 draft policy and assist in prior tracking of
15 expenditures of scarce resources.
16 We're concerned the two sections of the draft
17 policy, trends in water quality and alternate data
18 evaluation, may create loopholes for listing water
19 bodies that are not based on solid scientific
20 evaluations. Trends in water quality may be linked to
21 hydrologic conditions such as drought rather than
22 increases in pollutants or degradation of water quality
23 conditions.
24 We encourage the State Board to carefully
25 address these concerns and develop a policy that ensures
26 objective methods are used to evaluate impairments and
27 that 303(d) listings are both scientifically defensible
28 and appropriate.
29 As we said earlier, the City of Lawndale
30 supports reasonable scientific-based controls to
31 mitigate pollution through storm water.
32 We hope you will consider our comments in
33 revising the draft 303(d) listing policy to reflect a
34 sound basis in science so we can focus our efforts where
35 they will do the most good to clean up the water of
36 Lawndale and the Southland cities.
37 Thank you. I have written a copy of these
38 comments for you.
39 MR. SILVA: Great. Thank you.
40 Eric Becker.
41 MR. ESCOBAR: Good morning. I am Eric Escobar for
42 Shad Bazzie, general manager for the City of Inglewood.
43 I would just like to express how we feel about
44 the City of Inglewood regarding these 303(d) lists. We
45 are in full support of comments that have been made so
46 far, and we hope that the decisions taken by the
47 State Board are something that can help the cities in
48 South Los Angeles County.
improvement, the toxicology is persistent, and the
toxicity is associated with an identified pollutant.

All of these conditions would be required to
successfully complete a THGL for toxicity. So
therefore, we think it makes sense to use a weight of
evidence approach when evaluating toxicity. So we would
recommend that a change from using toxicity alone as a
listing factor, which was proposed as an alternative in
the functional equivalent document, to only using
Alternative 3, which is the use of a weight of evidence
approach.

One other technical comment that could be
significant in the implementation of the policy is that
when considering listing factors such as adverse
biological response and degradation of biological

1 populations, the policy doesn't really provide any
guidance on how baseline or reference conditions are to
be established.

So that's -- as you can imagine, this is going
to make all the difference on how these evaluations turn
out, what the baseline and the reference condition is.

So therefore, we would recommend some additional
guidance be provided in the policy on how to establish
these conditions.

And in closing, we'd just like to commend the
State Board for all of their hard work. We think that
you have developed a credible and scientifically-based
policy, and we support the State Board moving forward
with the policy. We understand that it's the State
Board's intent to have the policy in place before the
next update of the 303(d) list, and we support that
approach as well. Thank you.

18. MR. SILVA: Thank you.
19. Mary Jane Foley:
20. MS. FOLEY: Thank you.
21. Good morning. My name is Mary Jane Foley, and
22. I am here today for the Southern California Alliance of
23. TOOLS, and I have a card so it will help you. I always
24. have something for the court reporter.
25. Thank you for the opportunity to come and make

1 some comments. A lot of our members have already spoken
this morning. Before I reiterate some of their
statements, I think in a brief manner, I want to do a big
compiment to the staff to Craig and staff to -- the
people who have worked with him, because all throughout
this process they have been so accessible, so helpful.

It has been a real pleasure, and they deserve a whole
lot of credit.

So on the policy, the policy is a real
improvement, as a lot of speakers have said. It's the
best that ever existed, in our opinion. We like the
standardized approach. We like the transparency. We
like the fact that it requires facts sheets, public
hearings before the Regional Board which didn't exist in
the last go-around, and opportunities to comment before
the State Water Board.

We believe the one list is problematic. We
believe that the State Board should go back to including
on the 303(d) list only those waters that do not meet
water quality standards due to pollutants for which the
TMDL is required.

And the reason the one list is scary to that
history shows that sometimes in a certain era, everybody
understands the rules of the game and makes their
assumptions on how this can work out to be fair and
practical, and then the rules of the game change. New
people come in, EPA has a different decision tree that
they pass down to the State and they say, "No. We're
not going to do it that way. They're on the list.
They're on the list, and there's no going off the list.
And so having experienced that in my lifetime,
I think that the need for multiple lists or a couple of
lists is critically important to be able to assure the
next generation that they don't have to interpret what
this generation thought was.

And then the comments that have been made on
the planning list or monitoring list to recognize the
areas where the impairments were undetermined or there
was insufficient data, I think it's a very pragmatic way
to go. Most people really liked the July document, the
draft document, and I understand how it got changed.
And I am not going to revisit any of that, but the one
list, to me, is the number one thing to petition the
Board to reconsider.

Also, in our comments, in our written comments
that will come later, we command the Board for providing
a mechanism for the reevaluation of water bodies
identified in the 303(d) list using the listing policy.
Once it is approved and we -- I would also --
Clayton, who came up, and some of the other people

1 referenced an ability, when a party requests in writing,
to reevaluate water bodies where they think that they
were done in -- that the information may be invalid or
inappropriate. We support that because of the scarce
resources and because anybody who has done research on
the 1998 list realizes it was pretty loosely done. And
it's nobody's fault. It's just the way that guidance
came down at that particular time from EPA to the
State.

And given the lack of resources, given the
desire to look at priority and priority pollutants,
priority in where we are going to do these TMDLs, I
think the ability to have a party -- you know, and the
burden would be on the party to look at some of that --
is not an unreasonable request.

So we thank you very much for coming and
especially for coming to Southern California. And we
look forward to working with you on it, and we think you
for this policy.
20. MR. SILVA: Thank you.
22. MR. ANDERSON: Good morning. My name again is
Rodney Anderson, and I represent the City of
Surhank Public Works. And I, too, want to commend
the Board and staff for putting this policy together and
working on this. I think it is a great improvement from
how the lists have been done in the past. To have a
transparent policy is going to be very helpful.

Last year, when the 2002 lists came out, we
made comments regarding a certain listing of Academy,
which was the Burbank western channel. And at that
time, we submitted a number of data points. They all
were non-detects. And yet because there was no policy --
if we just said that staff pollutants were low, so it
will continue to be listed.

Well, with this new policy, it looks like
it's going to be transparent. We look forward, when
this policy is implemented, that we can get the
delisting that we think are justified. So we do
appreciate that this is being done.

And at the same time, although we think that
this policy will be good, we do have a couple of issues
that we would like to address. Number one -- and it was
just mentioned by Mary Jane, and I am going to add to
her comments regarding the reevaluation of some previous
listings, the 1998 listings. We are disappointed that
all of those listings will not be reevaluated according
to this policy. But I think that we recognize that
performing a TMDL is much more time consuming than
evaluating a potentially wrong listing. So although it
I would take a lot of time to reevaluate all of the
listings, it's even more time to do TMDLs for those
listings.

However, at the same time, it is the
likelihood that a number of those listings may be
justified. We would request that when the State Board
is requested in writing from a party to reevaluate a
certain water body that that old listing would be looked
at. That would allow those listings that we can all
agree that yes, there is an impairment, there is a
problem, those would not have to be reevaluated.

But those where we think that there is a
problem should be reevaluated, even in the absence of
new data. The reason for this is some of those
listings, were done in a drive-by approach.

For example, there are some nuisance listings
for the Barbuck western channel: algae, odor, and
corne. And those that were on the 1998 listing were
certified to the 2002 lists. It's unclear to us how those
listings were created and what additional data we can
even submit to get those delisted. It's unlikely that
individual observations will be accepted as new data to
have those reevaluated, even though we believe that's
how those listings were created in 1998.

So to ask for new data on some of these

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1. Nuisance listings is very difficult for us, and we know
that the kind of data that was probably done to get the
1998 listings won't be accepted now. So we would want
some of those reevaluated when requested in writing.

The second issue we would like to talk about is the
trends in water quality. We disagree that trends in
water quality should be used as a criterion to list
water segments that would not otherwise meet conditions
in the draft listing policy. This criterion includes
the inclusion of water segments on the 303(d) list in
the absence of information that water quality objectives
are exceeded or that beneficial uses are impaired.

If reevaluated in the PSD, there are so widely
accepted approaches for documenting trends, and the data
is often difficult to interpret.

The draft listing policy does describe five
very general guidelines for determining these trends,
but those guidelines are somewhat ambiguous and lack
specific requirements for consistent, statistically
valid data evaluations.

For a normal listing with data, there is a
requirement that 10 percent of samples with a confidence
level of 90 percent, using binomial distributions, is
how one gets listed.

For the trends, it's not clear that -- you may

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1. have seen exceedances and still get listed. There is no
2. concrete guidelines on that. Perhaps specific
3. guidelines, such as at least 5 percent have to be -- or
4. exceedances, or there is a 25 percent increase in the
5. pollutant concentrations over a five-year period, or if
6. there is a minute number of samples. The only statement
7. is that there are three years, and they have to look at
8. some general guidelines. So those criteria are so
9. subjective, we feel they need to be pulled down a little
10. bit more it trends are to be used at all.
11. And that concludes my statements. I
12. appreciate again you coming down here and taking the
time to listen.

MR. SILVA: Thank you.

Phyllis Papan.

MR. PAPAN: Good morning. My name is Phyllis
Papan, and I am speaking here today on behalf of the
City of Signal Hill.

I want to thank the Board for the opportunity
to comment today. First, I would like to thank the
State Board and staff for the recent progress on the
State's 303(d) list.

During the preparation of the 2002 303(d)
list, State board staff reviewed and analyzed the
recommendations submitted by the Regional Boards and
theirs staffs. This was a good start at scrutinizing the
technical and scientific support used by the Regional
Boards for the listing and delisting.

Further, we strongly support the State Board's
goal of establishing a standardized approach for
assigning water bodies to the State's 303 list.

We endorse the inclusion of requirements for
data quality and quantity, requirements for consistent
and statistically valid data evaluations, and
implementations provisions. The inclusion of such
requirements would immediately improve the scientific
merit of a 303(d) list.

Further, we strongly support the inclusion of
a planning/monitoring list. The draft December 2003
listing policy removed the planning and monitoring list,
which were in the July draft policy. A planning and
monitoring list, or a watch list, is important for cases
where the impairments are undetermined; for example,
unknown toxicity, cases where data are insufficient to
determine if an impairment exist, and in cases where
water quality standards may be inappropriate.

Water bodies placed on the planning and
monitoring list would need to be studied further. They
could be placed on the 303(d) list of impaired or not
listed as not impaired. Use of a watch list has been

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1. Finally, the City of Signal Hill continues to
be concerned that the Los Angeles River estuary has
several listings related to historic use of pesticides
and lubricants. Among these are chloroform, DDT, lead,
PbS04, and zinc. These are all listed because of
presence in sediment.

Instead of being listed, they should be placed
on a watch list. It would appear to be impossible to
establish a traditional TMDL for legacy pollutants so
longer in use such as chloroform and DDT and PbS04. Some
other mechanisms should be used to deal with such
conditions. Such historic pollutants cannot be
controlled by controlling current discharges.

We want to also support the comments of the
Coalition for Practical Regulation given by Richard
McKenney, and thank you for the opportunity to speak
today.

MR. SILVA: Thank you.

Larry McKenney.

MR. MC KENNEY: My name is Larry McKenney from the
County of Orange, and I am here representing the Orange
County Flood Control District in our 14 cities.

And I hesitate to even suggest that I can add
24 to anything. So rather than going through any specific
comments, I just want to make one suggestion

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1. strongly recommended by the National Academy of Sciences
in its report to Congress, and it would help avoid
inappropriate listings, unnecessary TMDLs, and unsafe
use of resources.

2. The City of Signal Hill is also concerned with
provisions in the draft policy which will allow listings
based on pool data. As written in the December draft
policy, a segment of water body could be placed on the
303(d) list if just one sample from that segment reaches
water quality criteria and samples in adjacent segments
exceed criteria. We request that the draft policy be
amended so that each water segment is required to be
evaluated independently, which is a much more accurate
indication of actual water conditions.

Further, to ensure development of TMDLs were
appropriate and necessary, we specifically request that
the Board require a reevaluation of each water body
carried forwards from the 1998 303(d) list. Many
listings from the 1998 303(d) list may be inappropriate
because of inadequate data quantity or quality, evidence
that natural sources have caused or contributed to the
impairment. Water quality standards upon which listings
are based are inappropriate. This recommendation is
consistent with the July 2003 draft policy that insists
on prioritizing water and state local resources.

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1. Page 48

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Thank you very much for coming. Thanks for being here and the staff's excellent work.

MR. SILVA: Thank you.

I've been here with the cases that we received, so what I would like to do is take a quick break and let the reporter take a short break for maybe about ten minutes or so. We will come back at 10:25 and we will reassume. Thank you.

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flipping it around, did this group of samples meet the standards with a confidence? So that’s a different approach that doesn’t add to what you did with the arbitrary 10 percent as you have right now.

On the second major area, that is the requirement that the pollutant or pollutants that cause, observe toxicity or another biological response must be identified before a water body can be listed or a TMDL can be developed, this must be removed from the document. The requirement will totally create a backstop on cleaning up the most polluted waters in California.

The overall result of this requirement will be that water bodies exhibiting the most severe impact such as toxicity, adverse biological response, and degradation of biological population communities will be difficult, if not absolutely impossible, to lift because the pollutants that are causing those impacts must be identified. And as we all know, it’s not that easy to do that. In addition, water bodies already listed for may be delisted, which is a major concern.

This cause and effect link typically cannot be established through simple or standardized tests. Instead, special studies are required. The listing policy is shifting the burden of establishing absolute

cause to the State Regional Boards.

The end result of this policy will be that water bodies shown to have exceed numeric standards through chemical analysis will be easier to list than those water bodies that are exhibiting more severe impacts, which are often caused by low levels of multiple pollutants.

The trend at the federal level on regulation and research is to focus on biological effects and impacts, because the whole point is to protect our water resources. Yet this listing policy is leading California in the exact opposite direction.

One thing, I think, that’s very critical to point out is that exact debate has occurred for the last 25 years on the whole 301(h) waiver issue, and that argument made by the dischargers has lost this time and time again, where it is an impact, then you must indeed upgrade your facilities. That is what you have seen in 301(h), and that has worked quite well, I think, for the State of California.

On the third major policy, delisting policy must establish basic minimum requirements as provided for in the listing policy and must provide much more certainty than there is today. So we recommend a policy clearly that includes the following:

1. A minimum of three years or more raw data must be used in the evaluation for delisting;
2. Data must be representing conditions that occurred in the water body during the sample period;
3. To be represented, the following must be considered: sampling frequency, sample of distribution of samples, and more;
4. Critical conditions — this is very important — must be sampled, and this includes a representative number of wet weather samples during varying levels of storm duration intensity. You can imagine an approach that doesn’t look at critical conditions that would lead you to the wrong outcome.
5. Also, the policy related to small sample size must be modified as well. The number of samples that exceed a standard threshold for small sample size is not acceptable, and in most cases 26, 30 percent. This will result in a failure to list many impaired water bodies.
6. So our recommendation in this particular case is best professional judgment. You must consider the number of exceedances and exceedance rates. If there are only three samples but all three exceed, then indeed that should be listed. Also, the magnitude of those exceedances and the severity of the measure you are actually evaluating, toxicity versus a potential

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one that was given, the arbitrary 10 percent and 2 percent, is based on data for a five-week period. So it's certainly not enough to make a regulatory decision. And not, lastly, because I know I have gone way too long, is that if there is an enforcement program, then the pollutant can't be listed on the 303(d) list. So that's throughout the document, and it's very confusing in a lot of places. Instead, it gets put on the enforcement list. And there are specific examples that talk about trash that are most troubling, at anything else. If you have local anti-littering ordinances, for example, one can interpret that there is no way that body would be 303(d) listed, regardless of whether or not there is severe water quality impairment.

And to even take a step further, there would be no listing if there is any mechanism for enforcement. So, for example, if you have an MS-4 permit that requires cleaning and street sweeping, since that is an enforceable program and you have that MS-4 permit for that, this would ensure that no urban receiving waters would get listed for trash. Clearly, this can't be the intent of the State Water Resources Control Board in why you have strongly upheld the trash 303(d) list at times. And honestly, trash is a major, major impairment issue.

And then on spatial and temporal guidelines, the current ones are completely nonsensical. Right now, it says if you have two samples collected within 200 meters of each other, it would be considered the same station. And this is really not protective. If you look at the example of beaches where you have a storm drain and then 200 meters away you have open ocean, and if you combine those together, basically you would be eliminating many of the violations right in front of the flowing storm drain and the actual pollution source.

The other thing is that most MPDS permit programs are set up where you have the outfall and you're looking at water quality impact as well as the outfall and below the outfall. And if you were to combine those together, that just makes no sense. And the same sort of approach occurs for the spatial distribution where if you collected samples within the same week — basically they were saying combine them then — then you can imagine for storm water how ridiculous that would be and for beach water quality how silly that would be as well. With that I would like to pass it forward to Sujatha from Environment California. Thank you.

Sujatha from Environment California. Thank you. My name is Sujatha

Jahagirdar. I work with Environment California, and I would just like to take a few minutes to focus on some of the real world impacts of this proposed guidance. I will focus on a lot of the technical issues, but I want to just bring it down to a concrete level and talk about specific waterways that we believe are in danger of dropping off the 303(d) list if this process goes forward.

So the questions that I would like to ask are what types of waterways would never have been listed in the first place if this policy were to be adopted as it is today?

And the second question is what types of waterways will drop off the list if this current criteria is applied to waterways that are already on the 303(d) list?

And the answer to those questions is that the impact will be that real waterways that are part of communities that are part of the fabric of this state that people fish in, swim in, and rely upon to support the health of their daily lives will never be cleaned up.

And specifically I would like to talk about a few examples. The first is San Antonio Creek. And San Antonio Creek is a small little waterway that runs through the center of Ojai in Ventura County, and it's a beautiful creek. There is a park around it in Ojai itself, and then as it exits the city, it runs into agricultural land where it runs through orchards of avocado trees and orange trees, and it's seen as central to the identity of this part of Ventura County so much so that the Ventura Stream Team adopted this creek as a waterway that they want to go ahead and protect. And they want to protect it not only for its aesthetic value and as a place of refuge for the community, but also because it's home to the unarmored three spike stickleback, which is an endangered species that was put on the federal endangered species list in 1970.

And so through the testing that the Ventura Stream Team did, they were able to identify nitrate as a contaminant in the waterway. And what nitrate does is -- it's a product of -- it ends up in waterways mostly through runoff from agricultural lands. And when it's in water, what it does is it encourages the growth of algae. And when you have lots of algae growing in a waterway, you have a lot of bacteria that feed on the algae which then suck out the oxygen from the waterway. And so in effect what you do when you have a lot of nitrate in a waterway is suffocate the wildlife that are actually present in the waterway and threaten species like the unarmored threespike stickleback.

So nitrate is a huge problem, and the Ventura Stream Team identified that nitrate was a problem in much greater than 10 percent of the threshold that were originally put on the list. In fact, they found that out of 23 samples demonstrated elevated levels of nitrate above water quality standards. Unfortunately, however -- and the Los Angeles Regional Water Quality Board acted upon this data and consequently put this waterway on the list. Unfortunately, with this current policy, you would know now south of the 23 samples to have listed this waterway in the first place. So San Antonio Creek is the type of waterway that we may see never put on a list in the future or may be threatened if the suggestion from the earlier speakers are taken to reevaluate the list immediately and take out waterways that don't meet the policy.

The second waterway I would like to highlight is the San Gabriel River, its listing for zinc. The San Gabriel River runs through East Los Angeles. It's one of the few common threads that we have of this massive sprawling county that actually lives together.
1. So, if you have similar complaints, just say you agree
   with the comments.
2. MR. WILSON: Thank you. My name is Rick Wilson. I
   am the coastal management coordinator with the Surfrider
   Foundation national headquarters in San Clemente.
3. Surfrider believes that the proposed policy is
   not consistent with the use of the precautionary
   principle. In fact, it’s almost the reverse. As was
   stated before, it seems like the way that it’s worked in
   several places is to when is doubt, throw out the data.
4. You know, when in doubt, don’t list or delist. And it
   also seems to encourage not testing, dischargers not
   testing. Because if they don’t have enough data, the
   criteria and the policy won’t allow a waterway to be
   listed, or it would cause a waterway to be delisted.
5. Specifically, one of the instances that we’re
   concerned about is the requirement for five exceedances
   to list a water body, and we believe there are several
   instances where the existing data, even though it’s not a
   lot of data, clearly indicates that there is a problem,
   and the water body would not be listed.
6. There are places where the data — there are
   literally 100 percent of the data, three or four
   samples, show exceedances and the water body would not be
   listed. It does not allow for what Mark Gold referred
   to as best professional judgment to be used in listing
   such water bodies.
7. Just one example of a water body that might be
   the case is Dana Point Harbor. Dana Point Harbor is
   currently listed for copper, but there is very limited
   data.
8. However, it’s clear to us — and I think
   anybody who looks at the situation and there is a reason
   that it’s reasonable to be listed, it’s very well known
   that copper is a major problem causing contamination in
   harbors and marinas. And so not to list Dana Point
   Harbor for copper would not make sense. It would not be
   consistent with the precautionary principle, and it
   would not be consistent with best professional judgment.
9. The only other comment I wanted to make had to
   do with the toxicity. We are strongly in favor of
   keeping the requirement to list bodies due to toxicity
   testing exceedances, even in cases where a pollutant is
   not identified.
10. There are clearly cases where there are fish
    deals where there are high mortality and toxicity
    testing where there is a problem with a water body and
    it should be tested. That doesn’t preclude, and it
    should include additional testing to identify the
    pollutant, but that doesn’t mean that the body should
    not be listed for toxicity. So we encourage you to keep
    that requirement in the listing procedures.
11. Thank you.
12. MR. SILVA: Thank you.
13. MR. SLOMEN: Hello. Thank you for the opportunity
    to speak with you today on this important issue. My
    name is Gabriel Solmen. I am an associate attorney at
    San Diego Baykeeper, and San Diego Baykeeper is a
    nonprofit organization committed to water quality
    protection throughout the State. Our purpose is to
    preserve, enhance, and protect the state’s coastal
    estuaries, wetlands, bays, and other waterways from
    illegal dumping, toxic discharges, and habitat
    degradation.
14. And as a San Diego resident and a clean water
    advocate, I am concerned about this draft guidance. We
    have worked hard through San Diego Baykeeper to work
    with regulators and the community to identify these
    impaired waters, and we are making great strides through
    the TMD program to clean up these areas.
15. And my point is, we’re concerned before me is that
    some of these current waters would not have been listed
    under this draft policy. And I will just give you a few
    examples from Region 9 for that.
16. One, as we have just mentioned, Dana Point
   Coyote Creek, and it’s a major part
   of the local economy.
And there will just tell you about the lake Hedges, which is currently listed for pollen (phacelic). And again, you have the same issue. Although the lake has 100 percent occurrences every time it's measured at least from 88 to 200, it would not have been listed under the draft guidelines. And the problem there again is the sample sizes are too small to be counted under the binomial model. So even though we know there is a consistent problem there, it would not have been listed. So I just offered these examples as evidence that the draft guidance policy doesn't always track common sense or real life experience, and I urge you to remove the confusion and rigidity from the language in the draft guidelines. Thank you.

MR. PETRUS: I have a question before you step down. Under 3.1.11, the alternative data evaluation, do you have a comment on whether they would overcome some of the issues you and some of the previous speakers have raised, or do you have any comment on that section?

MR. SCHMIDT: Yeah. Absolutely. And perhaps I am not the best person to speak to this, and I think that other speakers can comment on this, but one thing is that the requirements for the NQE are relatively unclear. And I think that for some of the requirements, we get into problems with the binomial model. So I don't think that it's a complete solution.

MR. PARADIS: I am Dave Paradis. I think I will change things around a little bit and tell you where she left off. Let's talk for a moment about the relationship between the binomial approach, a one-site fits-all hypothesis test. Okay, Science doesn't always rely upon hypothesis testing to make decisions. Quite frequently you read multiple lists of evidence. We heard one earlier that dissolved oxygen alone was inappropriate from making a nutrient determination. If we looked at Table 3.1 in the sample counts here, your statewide monitoring program is making wonderful progress on standardizing quality assurance and on standardizing methods for the first time in the state of California, but it does not have the resources to come anywhere near the sample counts in Table 3.1. Typically they measure conventional water quality on a month, typically nitrate and metals and the like, and toxicity. If measured at all, takes place once or twice a year. So normally we would take a year of sampling, have a few months of having nitrate, high phosphate, high chlorophyll, lost me up, I may never meet these sampling requirements.

So go over to the best procedure, which is... 

Section 3.1.11, and I begin to try to use this as the way to use scientific knowledge that any scientist would look at. But I get to this, and it says at a minimum the justification must demonstrate, and then I get to that measurements can be analyzed using a scientifically defensible procedure that provides an appropriate level of confidence as the listing factors in Section 3.1 and tests the null hypothesis that water quality standards are attained. Quite frankly, I didn't come here -- I come here because I wasn't testing a hypothesis, and I have been promulgated from using the alternative data section because it requires me to test a hypothesis when I have five or six different things that are telling me that this water is impaired such as high nitrate, high phosphate, high chlorophyll, and there are dying fish gathering for a boat.

I am not in this to test a hypothesis. Particularly, I have real world examples where that condition actually exists and there are five or six other streams where we have already seen these things, but I am unable to list this water body because I am unable to apply the multiple lines of supporting evidence. Again, in the alternative data analysis, that kind of demonstration is one of the principal reasons you find Regional Boards themselves who have to use this information, raising objections about this policy. There needs to be -- while I hear the regulator community say they feel that this is nebulous, I think that Regional Board staff and the environmental community feel as though there must be room for more scientific method on this thing. Hypothesis testing is not the only science applied to water quality. In another less technical area, we have talk of multiple lists. I think that most of us in the environmental community feel as though this draft of the policy is much improved over the previous one because there are less lists. In fact, there are two lists, one on which largely goes unnoticed. The Clean Water Act requires that you make a 305(b) list and a 303(d) list. Nobody in this room is talking about 305(b). 305(b) is effectively this planning list. This watch list. The downside of trying to create each of those other lists is that Regional Board staff time has to be spent jumping through administrative hoops to prove a program is enforceable or to establish yet more criteria. The fact is 305(b), the statewide water quality assessment, is required.
1 and have made some new friends, and I happened to have
2 met a fifth generation family farmer up in the Salinas
3 Valley who told me about how the water policy goes.
4 If that water in the stream is toxic, he's got to — you
5 know, somebody's got to do it, pollution, most likely
6 him because there is no money within the state to do it.
7 So that means he will have to conduct TIBs,
8 toxicity evaluations. These things cost
9 about 4 grand a piece. So if you want to do two or
10 three of them, make sure you're right. So at $12,000,
11 you're committed to identifying the specific pollutant.
12 Well, thank God this process wasn't in effect
13 last year. He put a retention basin in. It doesn't
14 even reach the stream anymore, and he dug a really
15 good-sized hole for it. Grand. This policy is going to
16 make him stand in a lab instead of on the ground.
17 That kind of breach of common sense and the
18 absence for the flexibility of the Regional Boards to
19 apply that common sense still does exist in this
20 document. I understand it's a difficult process to
21 serve the needs of the entire state and the needs of the
22 dischargers and the water quality, but you have to take
23 into consideration these kinds of economic realities as
24 well.
25 I guess in closing, just maybe one more

1 concluding remark regarding the binomial approach. I
2 have seen those bottled waters here. Let's say
3 Company A does testing on that bottled water there. And
4 they test the water, and when they're 90 percent sure
5 it's clean, they put the cap on it and give it to you
6 to drink.
7 Company B over here tests the water, and if
8 they're not 90 percent certain that it's toxic, they put
9 the water in the bottle and put the cap on it and give
10 it to you to drink. The policy as its use of the
11 binomial as written is a Company B approach.
12 I think the whole point and
13 really put some thought into the Regional Board staff
14 comments that nine Regional Board TMOs have had
15 problems with this. As some of you heard at the last
16 workshop, the United States Environmental Protection
17 Agency has some problem with this.
18 From a practical standpoint, if the workers on
19 the ground have trouble and if the people who are
20 ultimately going to approve or disapprove of the list
21 have trouble, those things really ought to be reconciled
22 before a final draft can be done here. Presently the
23 EPA will make its own policy if this policy isn't set up
24 in a fashion that's acceptable to them.
25 So these entire several years that we have

1 worked on this.
2 We are looking at specific issues like the
3 alternative data evaluation and are we going to have two
4 tracts available within these areas and the LA River?
5 Is water chemistry going to allow us to do that? We
6 don't think so. I am talking to people about doing
7 that.
8 And finally, I want to say because you're here
9 in Southern California especially, we got off on an
10 offshore by mistake driving down here. I picked up some
11 people at the coastline, and that's a lot harder to
12 get back on once you've got off of an offshore, and I
13 appreciate the time and effort that you have come here
14 to Southern California and did the outreach.
15 I hope our comments by the 18th — it will
16 probably be on the day of the 18th — will fill in all
17 of these because I have learned a lot from this process,
18 and I appreciate it very much. Thank you.
19 MR. SILVA: Thank you.
20 MR. EVERETT: And I could have just gotten up and
21 said I am in agreement with all of the statements said
22 here before me.
23 MR. SILVA: I guessed that.
24 Okay. That's all of the cards I have.
25 Anybody else that we missed or did not fill out a card?
1. If not, I want to thank everybody for coming here. I realize -- I have been on this for a while, and I have to tell you we're back to the same issues, the issue of how many lists we have and the methodologies of how you get on and off the list. It has been a long haul, and we will see what the comments say and what the Board's pleasure is in terms of all of these very tough issues.

2. And to be honest with you, we're not going to make everybody happy. We know that. We are just going to try to do the best that we can.

3. And I think Nancy has something to say.

MS. SUTLEY: We look forward to your written comments, and be as specific as you can be. That would be helpful.

MR. SILVA: Thank you very much for attending. And once again, you have until the 18th for written comments.

(The proceedings were concluded at 12:20 p.m.)
9/30/04

Board Meeting Testimony

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