

PUBLIC WORKSHOP
STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD

IN THE MATTER OF:)
)
REVISION TO FEDERAL CLEAN)
WATER ACT SECTION 303(d) LIST)
OF WATER QUALITY LIMITED)
SEGMENTS FOR CALIFORNIA)

)

HILTON PASADENA HOTEL
168 SOUTH LOS ROBLES AVENUE
PASADENA, CALIFORNIA

THURSDAY, JANUARY 5, 2006

10:00 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 PASADENA, CALIFORNIA

2 THURSDAY, JANUARY 5, 2006

3 10:00 A.M.

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5 VICE CHAIR SECUNDY: All right. Ladies and
6 gentlemen, why don't we get started. It's
7 10:00 o'clock. If you would all have a seat.

8 Good morning. This is the time and place for
9 a public workshop by the State Water Resources Control
10 Board regarding the proposed 2006 update of the Federal
11 Clean Water Act Section 303(d) list. This is the second
12 day of two days of workshops on this update.

13 The first workshop was held in Sacramento on
14 December the 6th, 2005. The purpose of this workshop is
15 to solicit comments on the draft staff report entitled
16 "Revisions of the Clean Water Act Section 303(d) of the
17 Water Quality Limited Segments" dated September 2005.

18 I'm Jerry Secundy, vice chair of the State
19 Water Board. I would like to introduce my staff
20 primarily responsible for the 303(d) list review and who
21 will be assisting this board in the work.

22 Craig Wilson, who is on my right. This is the
23 good Craig Wilson. We lost the bad Craig Wilson.

24 Jesse Maxwell, who is in the back. Jesse,
25 wave to the crowd.

1 Robert Musial and Randy Yates from the
2 Division of Water Quality. And from the Office of Chief
3 Counsel, since we go nowhere without our lawyers, is
4 Steven Blum.

5 The order of procedure will be a brief staff
6 presentation, then comments from interested parties.
7 Please be sure to indicate on the card which region you
8 wish to address.

9 If you've not yet filled out a card and would
10 like to speak, please fill one out and bring it up. I
11 have to tell you, for those of you who are here now,
12 please fill out your card now so that I'll have some
13 estimate as to how long this will go. Right now I've
14 got about a dozen cards.

15 The workshop will not -- not be conducted in
16 accordance with technical rules of evidence. We will
17 accept comments that are reasonably related to the
18 303(d) list review, but if you start to go off into left
19 field, I'll probably bring you back.

20 Written and oral comments are all part of our
21 record. If needed, the State board member and staff may
22 ask questions to clarify the comments presented. To
23 expedite today's proceedings, I may limit the length of
24 oral presentations. Right now we're probably looking at
25 about five minutes per presenter. If the speaker before

1 you has addressed your concerns and if you could just
2 state your agreement and avoid repeating the comments, I
3 would certainly appreciate it.

4 Remember, what you are trying to do is
5 influence the State board members and influence staff
6 members. And if we've heard the same arguments seven
7 times, you're probably not influencing us in a positive
8 fashion.

9 Today's workshop will focus on comments
10 pertaining to the Los Angeles region, the Lahontan
11 region, Santa Ana region, Colorado River Basin region,
12 and the San Diego region. The comments will not be
13 limited to those regions. So feel free to discuss any
14 aspect of the proposed list.

15 For those of you that weren't able to make it
16 to the Sacramento meeting earlier and want to talk about
17 one of the northern regions, feel free to do that.

18 The administrative record for this workshop
19 will remain open until January 17, 2006. You may submit
20 written comments at any time during that period.
21 Following the close of the record, State Water Board
22 will review all of the comments. Written responses will
23 be included in the final staff report.

24 Any substantive changes made as a result of
25 comments received will be made available to interested

1 parties until the State board considers the final 303(d)
2 list for adoption.

3 Again, please fill out the blue card so you
4 can bring them directly up to me. It's not a problem.
5 you do want to speak, please approach the podium.
6 Hopefully that microphone is working so everyone can
7 hear what you're saying. Please try to speak directly
8 into the microphone. This is being recorded, as you can
9 see, over to my left.

10 Again, try not to be repetitive. We have
11 already had requests from both the regulated community
12 as well as the environmental community to extend the
13 time frame. That is something we will take under
14 advisement. And by the time frame, I don't mean the
15 time frame for talking here but the time frame indeed
16 for submission of comments and keeping the record open.

17 So let's see how things go and we will make a
18 decision on that fairly shortly.

19 With that, I'm going turn it over to staff for
20 a brief presentation.

21 MR. MUSIAL: Good morning, and thank you. My
22 name is Robert Musial, and I'm a Water Resource Control
23 engineer in the Water Quality Assessment Unit. I would
24 like to provide you with a brief overview of the
25 requirements of Section 303(d) of the Clean Water Act, a

1 significant development since the last listing and a
2 summary of the methodology we used to develop the
3 updated lists.

4 The Clean Water Act Section 303(d) requires
5 the states to identify waters that do not meet
6 applicable water quality standards after the application
7 of technology-based controls. This list is commonly
8 referred to as the 303(d) list or "The List."

9 The List must identify each water body not
10 meeting standards and specify the pollutant that exceeds
11 the standards. The List was last revised in 2003. A
12 schedule prioritizing total maximum daily load
13 developments must accompany this list. A significant
14 development since the last revision of 2003 is the Water
15 Board's adoption of a policy which, for one thing,
16 establishes listing requirements.

17 On September 30, 2004, the Water Board adopted
18 the Water Quality Control policy for developing
19 California's Clean Water Act Section 303(d) list. The
20 listing policy identifies the process by which the water
21 boards will comply with the listing requirements of the
22 Clean Water Act, Section 303(d). The policy became
23 effective in December of 2004.

24 The objective of the policy is to establish a
25 standardized approach for developing California's list

1 with the overall goal of achieving water quality
2 standards and maintaining beneficial uses in all of
3 California's surface waters.

4 The policy outlines a weight of evidence
5 approach that provides a decision, rules for different
6 type of data, and approach for analyzing data
7 statistically and requirements for data quality, data
8 quantity, and administration of the listing process.

9 The policy requires that all waters that do
10 not meet water quality standards be placed on the list,
11 and there are two categories of the list. And they are,
12 number one, waters still requiring a TMDL; and, number
13 two, waters where the water quality limited segment is
14 being addressed.

15 In order to develop a proposed list, the Water
16 Board solicited, assembled, and considered all readily
17 available data and information. A public solicitation
18 of data and information began in April of 2004 and
19 concluded in June of 2004.

20 All data and information that became readily
21 available to Water Board staff remain part of the
22 administrative record and considered in the development
23 of the proposed list. The data received generally
24 covered the period of 2001 to early 2004. Some data
25 were submitted that addressed pre-2002 listings. Data

1 through March of 2005 from the Surface Water Ambient
2 Monitoring Program were included in the record. A staff
3 report was developed which, among other things, contains
4 the additions, deletions, and changes to the 2002 list.

5 Staff reassessed the priorities established in
6 the 2002 list. Based on budgeted resources currently
7 available and the factors presented in Section 5 of the
8 listing policy, staff recommended the schedules for
9 completion of TMDLs in Table 9 of the staff report.

10 All of the waters not presented in Table 9 are
11 recommended for completion by 2019. The 2002 list has
12 1,883 water body pollutant combinations. The
13 recommendations presented in Table 5 of Volume I of the
14 staff report would increase by 287 the water body
15 pollutant combinations.

16 I will conclude by saying that we are looking
17 forward to the comments we will be receiving today. If
18 you have any questions at this point, Mr. Craig Wilson
19 and I will be more than happy to answer them for you.
20 Thank you.

21 VICE CHAIR SECUNDY: Thank you. What I
22 normally try to do is to package the comment cards in at
23 least three different areas: The environmental
24 community, the regulated community, state organizations,
25 et cetera. And I try to be fairly equitable in terms of

1 which one goes first, and I change it at each of the
2 meetings.

3 But I was not at the meeting that Tam Doduc
4 held on the 303(d) listing. Does anybody know who got
5 to go first on that one?

6 Oh, she took it by region. Well, I'm not
7 going to do that. So why don't we have the State go
8 first, the environmental community go second, and then
9 the cities go third.

10 We'll give the U.S. EPA the privilege of going
11 first. So Peter Kozelka, if you'd like to come up. And
12 again, we are starting off with a time limit of five
13 minutes.

14 MR. KOZELKA: Good morning. I'm Peter Kozelka
15 from EPA Region 9.

16 Respected board members, start off with some
17 general comments and then some specifics. First of all,
18 I want to say that we recognize the enormous amount of
19 effort, and we support a vast majority of the listings,
20 that is, greater than 95 percent we don't have a problem
21 with.

22 More importantly, I believe it's important to
23 get on with this and complete the process quickly. So
24 we actually encourage you to not slide past the date of
25 April 1, 2006. Albeit optimistic, we think that's

1 really important.

2 I have two concerns -- two areas of concern,
3 one area of support, specific support, and two general
4 comments, and then I'll close.

5 The first concern and perhaps the most
6 critical is the area of toxics. We believe the
7 assessments must be based upon the applicable water
8 quality objectives. In this case, the California toxics
9 rule is a federally established water quality standard
10 for this state.

11 And the staff assessment methodology contained
12 in the policy is inconsistent with the CTR which simply
13 states that the water column concentrations should not
14 be exceeded more than once in three years. So this
15 whole thing about the binomial approach may or may not
16 yield the same decision, and we would actually urge you
17 to direct staff to make sure that the assessments in the
18 area of toxics is consistent with the frequency outlined
19 in the CTR.

20 There are a couple of specific places here in
21 Southern California: San Gabriel River, Dominguez
22 Channel fresh water portion, Coyote Creek, et cetera.

23 This will require the staff to do some
24 additional analysis to the existing data that's in the
25 administration record based upon this more than once in

1 three years. We suggest such analysis begin by
2 carefully considering the number of exceedances in the
3 three most recent years, and if none exist, then go back
4 in time another three years.

5 It doesn't necessarily mean it is going to
6 dramatically change things. We don't necessarily
7 predict it's going to be more listings or less listings,
8 but we want it to be consistent with standards.

9 For both you all, this is something that was
10 actually stated as we were making some comments during
11 the development of the listing policy, and so this is
12 perhaps the most fundamental difference in the context
13 of what's in the policy versus what's in the federal
14 regulations, and the regulations say it must be
15 consistent with the expression of standards.

16 Comment number two, concern number two has to
17 do with the weight of evidence approach. We're
18 concerned in short that the weight of evidence approach
19 may not have been applied in certain cases, and we
20 believe it might lead to some listing recommendations
21 that are at odds with existing water quality objectives
22 and the compiled data and information.

23 More specifically, we're concerned about not
24 using all available data. Some fact sheets indicate the
25 assessment of certain data was not completed due to a

1 lack of a definitive criteria benchmark. However, we
2 remind you that federal regulations require states to
3 evaluate all readily available data in comparison to
4 both numeric and narrative water quality standards.

5 Furthermore, the policy contains this weight
6 of evidence approach that could be utilized to assess
7 the other benchmarks than those that are identified in
8 the FED, federal equivalency documents or rather the
9 functional equivalent documents. Excuse me. This would
10 be consistent with use of finding some numerics for
11 those narratives.

12 So here's two examples related to this concern
13 about the weight of evidence. If you only have total
14 metals data, then as far as we can see, there hasn't
15 been an assessment occurred against the applicable
16 aquatic life objectives in NCTR and we would urge staff
17 to consider several options to pursue this evaluation.

18 The goal is to sort of generate an
19 apples-to-apples comparison. In the CTR, there are
20 actually three explicit presentations on how to use
21 metal translators. You can use a default translator.
22 You can use a site-specific translator. You can use
23 these things called partition equivalent coefficients.
24 Taking any one of those would be fine with us.

25 A fourth approach, which is still an option,

1 maybe a little more different because it's not quite
2 apples-to-apples, would be to take the total ambient
3 results and compare them to the dissolved criteria. The
4 first three you could actually generate a total-to-total
5 comparison, and that would be optimal. Again,
6 neglecting to assess the available data is not an option
7 according to the federal regulations.

8 Another area of concern related to this weight
9 of evidence is the DDT and sediments. We recognize it
10 is most desirable to have tissue and sediment data for
11 evaluating bioaccumulations and other beneficial uses.
12 We believe that in the Dominguez Channel estuary there
13 is tissue data as well as sediment data with high levels
14 of DDT that's delisted.

15 But more importantly, there are places where
16 there may be only sediment chemistry data and how will
17 the State pursue. It seems as if, our interpretation of
18 the facts, says that there hasn't been any assessment
19 completed.

20 But we believe the policy contains the weight
21 of evidence section which essentially says that using a
22 single line of evidence and using other benchmarks, in
23 this case for something like DDT, which is a
24 biocumulative, you could protect for higher organisms
25 including human health.

1 So we suggest taking a sediment benchmark that
2 is equivalent to or -- how should I say this?
3 Developing a sediment benchmark by taking a CTR water
4 value and back calculating using sediment-to-water
5 ratios to determine a corresponding sediment value.

6 Both chemistry results would be compared to
7 the CTR derived value, and you could look at the number
8 and magnitude of exceedances.

9 VICE CHAIR SECUNDY: You're going to have to
10 wind up.

11 MR. KOZELKA: Yes. We support the Colorado
12 River assessments. I think that's the first time it's
13 ever been done. Appreciate the State's effort on that.

14 We have some concerns about the data and the
15 data sources reviewed. I should say it's a comment, and
16 that is essentially we feel this is a very robust asset.
17 We encourage the State to do that again in the future.
18 We would encourage you to think that yes, because
19 there's more data out there, it may take some direction
20 for you to streamline that effort to give some direction
21 to folks to provide data in databases or spreadsheets
22 and corresponding meta data to make that appropriate.

23 There has been some expression concerning the
24 idea of new data, and we believe that you should not
25 categorically rule in or rule out new data, that you

1 should consider it on a case-by-case basis, and we would
2 be happy to work with you to develop some criteria to
3 make the sorting of that easier. Again, the goal is to
4 meet the deadline of April 1, 2006.

5 In summary, we have much support for this
6 list. When it comes to us, we will carefully evaluate
7 the final submittal, the decisions therein, and the
8 State's technical rationale to support those decisions.
9 And if need be, we will add waters to make the final
10 list once EPA provides their approval. More written
11 detailed comments will be provided in the comment
12 period.

13 Thank you.

14 VICE CHAIR SECUNDY: Thank you very much.

15 Next is Richard Watson.

16 MR. WATSON: I thought you were taking the
17 State first.

18 VICE CHAIR SECUNDY: Well, somehow you got in
19 here. I will say actually Mr. Watson, sit down. I was
20 taking the State first. I'm not sure how you got into
21 the State.

22 Jose Angel.

23 MR. ANGEL: Good morning, Mr. Secundy. Jose
24 Angel, Assistant Executive Officer of Region 7.

25 Actually Dr. Zeywar with me from staff is going to make

1 some brief remarks. I will also offer supplement at the
2 end of this presentation, if needed. Thank you.

3 MR. ZEYWAR: Good morning. My name is Nadim
4 Zeywar. N-a-d-i-m, Z-e-y-w-a-r. I am an environmental
5 scientist with the Colorado River Water Quality Board,
6 and I am going to present our comments on the latest
7 303(d) list recommended by State board staff.

8 VICE CHAIR SECUNDY: Sir, you are going to
9 have to either hold or come around. That would be
10 better.

11 MR. ZEYWAR: Okay. To begin with, we thank
12 State Board staff for such hard work on delivering the
13 303(d) list, and we still have two issues of concerns
14 that we wanted to address the Board that we weren't able
15 to resolve with the State Board staff.

16 The first issue is listing the Colorado River
17 for manganese. That issue is probably a matter of just
18 taking data from the wrong location. The data that we
19 collected for manganese was in the Reservation Main
20 Drain Number 4, which is part of the lower Colorado
21 River Basin region but is not part of the Colorado
22 River. So that I think it shouldn't go on the list.

23 And this particular drain is part of the Bard
24 Valley which is in the lower Colorado River basin, and
25 this drain also doesn't have any municipal beneficial

1 uses. So otherwise we would support listing this drain
2 on the 303(d) list.

3 The second issue and the most important one to
4 us is listing the All-American Canal for sulfate, total
5 dissolved solids and specific conductance. And to give
6 you just some background and history about the canal,
7 the old canal is actually an extension of the Colorado
8 River. It was established to divert water from the
9 Colorado River to the Coachella and Imperial Valley.

10 So the All-American Canal water in terms of
11 water quality is the same as the Colorado River water.
12 There are no discharges into the All-American Canal
13 either at that point or non-point source. So the same
14 water quality applies to both of them.

15 The Colorado River water quality in terms of
16 water quality objectives for salinity is about 879
17 milligrams per liter based on our basin plan. The State
18 deals with Colorado River salinity issues via the
19 Colorado River salinity forum because the Colorado River
20 is just such a huge river that required this forum to
21 deal with its salinity quality.

22 So as a matter of fact, we have a salinity
23 water quality objective, and we think that the available
24 data does not exceed that limit enough to be listed for
25 salinity.

1 The same -- well, for sulfate, actually it's
2 another constituent that was recommended to be listed
3 for the All-American Canal. And again, like the
4 salinity, if you list the canal for these constituents,
5 then the next step will be to the TMDL to develop TMDLs
6 to remedy the pollution or the impairments.

7 In this case, the TMDL is kind of very
8 difficult and very hard to engage because there are --
9 as I said, there are no waste discharge sources to the
10 All-American Canal. All the sources are into the
11 Colorado River, and the Colorado River is like about
12 1500 miles starting in Colorado and Nevada, and it's
13 going to be a big mess for --

14 VICE CHAIR SECUNDY: Are you saying simply
15 because it is difficult to implement and it's going to
16 be, quote, "a big mess" and some of the things perhaps
17 beyond the state's control that we should not, if indeed
18 it's listed, attempt to do a TMDL? What would be your
19 solution?

20 MR. ZEYWAR: Well, the solution would be to
21 list the Colorado River by itself, which is the source
22 of water, I mean --

23 VICE CHAIR SECUNDY: But not to list the
24 All-American Canal?

25 MR. ZEYWAR: Not to list the All-American

1 Canal because the All-American Canal does is a delivery
2 canal only. There are no sources that we can go after.

3 MR. ANGEL: If I may, Mr. Secundy. I can say
4 it far more succinctly this way. We actually don't
5 concede that there is an impairment. I'm sorry. We
6 don't concede that there is an impairment in the first
7 place.

8 What we are trying to convey to you, to the
9 Board and the rest of the Board members, is that if it
10 is listed pursuant to the State Board policy, we are
11 required to do a TMDL. I am not adverse to trying to do
12 the TMDL, but only to the point that it will result in a
13 meeting Basin Plan standards in this case. I'm not
14 adverse to chasing the pollution all the way up stream.

15 We're not conceding in the first place that
16 there is an impairment, but if there would be such
17 impairment, then, like Mr. Zeywar mentioned, we should
18 list the Colorado River, but we are not conceding either
19 that the Colorado River is impaired.

20 VICE CHAIR SECUNDY: Okay. You're going to
21 have to -- you've got about one more minute.

22 MR. ZEYWAR: Oh, okay. As Jose said, if you
23 look at slide No. 6 or No. 6 in this presentation, I'm
24 presenting here that California Code of Regulation,
25 Title 22 requirements for the secondary MCLs -- and it

1 actually has a range to be used to list for drinking
2 water for the secondary MCLs.

3 The range goes for TDS or salinity from 500
4 milligrams per liter as the recommended to the upper
5 limit, which is 1,000. And for salinity, all the data
6 actually did not exceed the upper limit in the table in
7 No. 6.

8 According to the -- also in Page No. 7, the
9 recommended level is required for higher degree of
10 consumer acceptance. Then if you can't get that -- if
11 you have your data between the recommended and the upper
12 limits, then this is still acceptable if it is never
13 reasonable nor feasible to provide more suitable water.

14 So in our opinion, this water is still
15 acceptable based on the difficulties of providing any
16 better suitable water for drinking purposes.

17 In the next few pages you have the data that
18 support our discussion, and it shows that most of the
19 data is between the upper and the recommended limit,
20 which is, according to the DHS, U.S. EPA and the code,
21 still acceptable for such uses.

22 VICE CHAIR SECUNDY: All right. And I've read
23 your conclusions, sir.

24 Just for your benefit and the benefit of the
25 others that are doing presentations, believe it or not,

1 the Board members do read what you submit. So when you
2 do come up, you don't need to go through your
3 presentations. We will either have read them or will be
4 reading them before we make a decision. So simply try
5 to highlight some things that you want to bring to our
6 attention.

7 MR. ZEYWAR: All right. Thank you.

8 MR. ANGEL: Just going to take one minute of
9 your time, Mr. Secundy and the counsel.

10 Very briefly, in the first case, the first
11 concern is the listing of an ag drain instead of the
12 Colorado River. That ag drain doesn't have a municipal
13 use. The criteria the staff tried to apply is the
14 municipal beneficial use. It should not be listed.
15 It's inconsistent with your own policy.

16 And the second more fundamental issue is the
17 listing of the All-American Canal. It is our opinion
18 that the All-American Canal meets our water quality
19 standards.

20 VICE CHAIR SECUNDY: Thank you.

21 Renee DeShazo.

22 MS. DESHAZO: Good morning, Mr. Secundy and
23 other members of the Board and staff. It's good to be
24 here.

25 The first thing I want to do is just

1 acknowledge the tremendous amount of work that's gone
2 into this. I know from having done it myself before
3 that it's a huge amount of work to pull all this data
4 together and analyze it.

5 And I also want to thank the State Board for
6 changing the date of this hearing because it conflicted
7 with our Board meeting in December. So I really
8 appreciate that accommodation.

9 VICE CHAIR SECUNDY: For those in the
10 audience, the reason indeed we changed the date is it
11 was conflicting with Region 4's Board meeting.

12 MS. DESHAZO: We really appreciate that.

13 I first want to start out by just saying that
14 there are many aspects of this list that we support.
15 There are some listings in particular that we're very
16 happy to see, including the recommendation to list the
17 L.A. River estuary for trash, the (inaudible) algae
18 listings in Malibu Creek and the listings for DDT and
19 PCBs in portions of the L.A. Harbor and in Ventura
20 marine jetties.

21 We do have several general comments that I
22 want to make today. We have a lot of specific comments,
23 but I'm going to save all of those for our written
24 comments and not go over those in detail today.

25 The first category of our general comments is

1 regarding the application of the bacteria objectives in
2 the draft 303(d) list, and the first comment relates to
3 the beaches along Santa Monica Bay which were originally
4 placed on the 303(d) list in many cases as a result of
5 beach closures, and these beaches were subsequently
6 included in the bacteria TMDLs for Santa Monica Bay, the
7 dry and wet weather TMDLs.

8 Per the listing policy, if a water body is
9 listed for beach closures, the listing policy says that
10 is not a valid reason for listing, and we don't have a
11 problem with that decision. We think that's
12 appropriate.

13 However, because a TMDL is in effect for these
14 beaches, we feel like the State needs to be very
15 thorough in its evaluation of all readily available
16 data. And specifically, as we heard from the staff
17 presentation, the data evaluation solicitation went from
18 about April to June of 2004.

19 Since November 2004, we have a tremendous
20 amount of new data coming in now from many of these
21 beaches, some of which were not originally monitored
22 under the Santa Monica Bay beaches TMDL.

23 So we feel like it's important before making
24 any decisions, final decision on these beaches, that you
25 make sure to include the year-plus of data, weekly

1 monitoring data, and some case five times per week
2 monitoring data, for these beaches given the impact that
3 it could have on these TMDL which are already in effect
4 for the Santa Monica Bay beaches.

5 VICE CHAIR SECUNDY: Let me just address that,
6 and I'm actually going to ask staff to respond also.
7 What I am told is we need a cutoff date in terms of
8 data. And at some point in time we have to say, "This
9 is closed," and then we will go on at the next cycle and
10 include that data in the next cycle.

11 MS. DESHAZO: Right. And I definitely see
12 that dilemma, and we have run into that in the last
13 listing cycle ourselves as we were soliciting data, and
14 I think, as Peter Kozelka of EPA Region 9 pointed out, I
15 think we need to be careful about what data is included
16 and do that on a case-by-case basis.

17 And we know that there's a lot of data that's
18 become available since the date of solicitation, and we
19 don't think that all of that should necessarily be
20 included in this round.

21 However, given that there is a TMDL in effect
22 for these beaches and the potential impact of not
23 looking at all readily available data on the TMDL that
24 is in effect, then we feel like in those cases, if there
25 is a TMDL, we really ought to make sure that, if there

1 are significant sources of data, that those are
2 considered given the potential impact on the TMDL and
3 its implementation.

4

5 MR. WILSON: In response to the question about
6 accepting new data into the record, it's a major issue
7 that we face. And just about everybody I talk to says,
8 "I have more data to evaluate." And evaluating new
9 information is completely appropriate. We need to
10 evaluate all data and information, but it takes staff
11 time, and there are limitations, and we have set
12 priorities on which data sets we review.

13 We're accepting all the data and information
14 into our record now. We're going to make
15 recommendations to the State Board on which data sets we
16 think should be reviewed, new data sets. But that has
17 to be balanced by the State Board with completing this
18 task on time.

19 And so that's really the challenge for the
20 Board members is how much more data should be evaluated
21 as part of this process, and that will be done once
22 we've seen all the comments that have come in.

23 VICE CHAIR SECUNDY: By the way, when we
24 speak, it does not take away from your time.

25 MS. DESHAZO: Thank you. I appreciate that.

1 I was hoping you were going to say that.

2 Well, let me move on. That was pretty much
3 all I wanted to say about that particular issue.

4 The second issue regarding the application of
5 the bacteria objectives is that in the L.A. region in
6 certain of our engineered water bodies, the regional
7 board has established what we call "High-flow suspension
8 of recreational uses," specifically Rec 1 and Rec 2
9 issues because of the inherently dangerous conditions
10 that are faced in these channels.

11 And this was actually something that the State
12 Board members, concerning our revision of our bacteria
13 directives, directed us to look into and see whether
14 this would be appropriate. We did that. We adopted a
15 basin plan amendment, and it is in effect now.

16 The draft list recommends listing for
17 bacterial indicators in some of these channels, and
18 specifically, the fact sheets note that the majority of
19 the data were collected during wet weather conditions.
20 Now, our high-flow suspension only applies under
21 conditions of half an inch of rain or greater and the 24
22 hours following.

23 What don't know whether those wet weather
24 conditions met that criteria. However, I think that
25 it's very important for the State Board staff to take a

1 look at some local rainfall data and see whether or not
2 the high-flow suspension was in effect in those
3 particular cases, and there are actually three water
4 bodies in particular that I identified: Aliso Canyon
5 wash, Burbank Western Channel, and the Dominguez Channel
6 at Vermont Avenue where that high-flow suspension may
7 have been in effect, and that would affect the listing
8 recommendations being made.

9 The next comment that I have is -- and I'll
10 keep this relatively brief because Peter Kozelka of the
11 EPA Region 9 already made it. We agree with his comment
12 regarding the evaluation of DDT and sediment. And
13 basically in the L.A. region we feel as though given
14 that we know DDT levels are highly elevated in many
15 areas of the L.A. region. We know there are sources of
16 that DDT historically, and also DDT is a very high
17 priority pollutant, bioaccumulative.

18 We feel as though we cannot ignore the fact
19 that we have sediment data for DDT. And basically what
20 we would recommend, which is slightly different I think
21 from what Peter is recommending in that State Board
22 simply maintain the current listings as they are until
23 we can find an appropriate benchmark because of the fact
24 that DDT is such a serious concern for us for our
25 aquatic life communities, for human health purposes and

1 so forth.

2 So we feel like, for an example, as Peter
3 pointed out, Dominguez Channel estuary is a case in
4 which we feel as though the DDT listing should stay in
5 place until we have a better benchmark that we can use
6 to evaluate that.

7 The next comment that I have, again, is
8 another one where we concur with Peter Kozelka's comment
9 that he made regarding the comparison of total
10 recoverable metals data to the CTR criteria and the
11 facts that, again, we feel as just because you have data
12 that's expressed in total form, you cannot ignore that.
13 You need to use that and apply, for example, the default
14 translators that are in the CTR and evaluate that data.

15 And, in fact, we have already looked at some
16 of the listings for the San Gabriel River as part of our
17 TMDL assessment using exactly that, basically taking the
18 default translators and converting CTR criteria to the
19 total and then comparing the total-to-total numbers.

20 And, in fact, if you use that approach, we
21 find a number of impairments in the San Gabriel River
22 estuary as well as some impairments in Coyote Creek and
23 in some of the upstream beaches that, if we did not use
24 that data, you would not necessarily see.

25 So the bottom line is we feel like if we

1 ignore that total metals data, which we should not, that
2 we would miss many of the impairments in the San Gabriel
3 River.

4 The final comment that I want to make is a
5 more specific comment, and it's specifically related to
6 chlordane in the Santa Monica Bay, and this is another
7 case of some new data being available. Their EPA has
8 done an evaluation of more recent data, some of which
9 was included in your evaluation that you did, and we've
10 reviewed that. And on the basis of that, we really
11 would recommend that chlordane should be delisted and
12 Santa Monica Bay, and we will provide some of the
13 specifics regarding that.

14 But both were sediment and for tissue. It's
15 clear that there's really no longer an impairment for
16 chlordane. And the issue with the fact sheet in the
17 data that you looked at is -- it was just slightly under
18 the number of samples that was required, I think, by
19 just a few.

20 There is more recent data available as a
21 result of regional monitoring of the data sources that
22 basically clearly showed that the indication of your
23 analysis, which is that it should be delisted is
24 certainly confirmed by the more recent data. So it
25 seems like it would be prudent to go ahead and either

1 use a weight of evidence approach saying that clearly it
2 needs to be delisted or include some of this new data so
3 that it can be delisted.

4 And like I said, I'll include many more
5 specific comments in the written comments that we
6 submit.

7 Thank you.

8 VICE CHAIR SECUNDY: Thank you very much.

9 Did I miss anyone from a federal or state
10 agency who submitted a card?

11 All right. We will go on to the environmental
12 community now. David Beckman.

13 We have comment cards from NRDC, Heal the Bay,
14 Surfrider Foundation, another from Heal the Bay, Center
15 for Biological Diversity. I don't know if there's any
16 particular order.

17 MR. GONZALES: There is, Mr. Secundy. I'm
18 going to go first, and my colleagues will follow in the
19 order that we had tried to get our cards in.

20 VICE CHAIR SECUNDY: That's fine. Please
21 identify yourself for the record.

22 MR. GONZALES: My name is Marco Gonzales. I'm
23 with a law firm out of Encinitas called Coast Law Group.
24 We represent a number of groups around this state
25 including Heal the Ocean in Region 3 and in Region 9,

1 Surfrider Foundation, San Diego Coastkeeper,
2 Environmental Health Coalition and the consortium known
3 as the Bay Council.

4 I'm going to make some comments about
5 Region 3. I appreciate you taking the time at this
6 hearing to take comments from the other regions, but we
7 were unable to make it to Sacramento for this.

8 These are comments that Heal the Ocean has
9 asked that you hear, and we will be submitting them in
10 writing as well. These have to do with some proposed
11 delistings, in particular at Carpinteria marsh For
12 sedimentation, at the Goleta slue for sedimentation and
13 at the Goleta slue for metals.

14 With respect to the slues and the marsh for
15 sedimentation, the listing is proposed because the
16 original data was found to be faulty and some data was
17 found to be missing from the files that various staff
18 and people recalled being there. We called this the "I
19 lost my homework rule," and the notion being that if
20 they can't find the data, that, therefore, it must not
21 have been valid at the time that it was listed and that
22 becomes a reason for delisting.

23 We think that obviously this is not protective
24 of water quality. We think in both cases the slues and
25 the marsh, there is recent data that does exist that has

1 been submitted. In particular, there is a management
2 plan for a Carpinteria salt marsh reserve that discusses
3 sedimentation issues and the attendant impacts.

4 With respect to the slue, this is kind of
5 funny. They spend 250,000 to \$500,000 each year to
6 dredge the slue specifically because of sedimentation
7 that occurs from tributaries. We find a bit of a
8 disconnect when the regional Board can even say that
9 they don't have the data but the local agencies turn
10 around and have this big dredging project every single
11 year because of the exact impairment that they're saying
12 now doesn't exist because they lost their homework.

13 With respect to the Goleta slue, there are
14 metals issues. The airport expansion at the Goleta
15 slues has resulted in some testing that I believe was in
16 the hands of the regional Board, perhaps a different
17 unit, and for whatever reason did not make its way into
18 the State board hands. But Heal the Ocean believes that
19 there is sufficient evidence to keep Goleta slue on the
20 list for metals.

21 Turning to the San Diego region, I've got two
22 good comments and two bad comments, and I think I'll
23 start with the bad and finish up with the good.

24 The first has to do with the listing. This is
25 in Region 3. Specifically there are proposed delistings

1 of stretches of the Pacific Ocean and local bays, water
2 segments really where dry weather data has resulted in
3 meeting the criteria. The problem is that we know for a
4 fact that every time it rains there are 72-hour general
5 postings for health problems for going into these exact
6 stretches of the coast.

7 There is wet weather data that exists in the
8 municipal storm water program that's clearly not being
9 considered, and just because a municipality comes in and
10 spends money on dry weather diversions, that's no
11 indication that during wet weather these same stretches
12 of beaches are not, in fact, impaired. And if the
13 public is precluded from using them, I think that's
14 pretty good evidence that they are impaired.

15 With respect to the second issue of delisting,
16 we have a number of water bodies that are being delisted
17 for insufficient samples. For instance, we have
18 segments where there were three samples taken. All
19 three were acutely toxic. And yet, because there was
20 not a fourth sample taken, the Board has recommended
21 delisting.

22 We feel like this is a bad policy direction to
23 go in. We think it will be more appropriate in the
24 protection of water quality to keep them on the list to
25 require additional data to be had before a consensus for

1 delisting can be had.

2 Now, turning to the good. Environmental
3 Health Coalition is particularly concerned with the
4 issue of PCBs in San Diego, and they're very supportive
5 of the listing of the entire bay for PCBs.

6 The Environmental Health Coalition focuses on
7 environmental justice concerns in the San Diego region
8 and San Diego Bay. And while the impairment for
9 commercial and sport fishing beneficial uses, which
10 includes consumption, has been based on evidence really
11 of the water quality, Environmental Health Coalition
12 wants the Board to also know that there is significant
13 data out there regarding the consumption of these fish.
14 The health risk link has not always been made, and we
15 think that that's appropriate to do in the context of
16 the listing.

17 EHC is particularly concerned with who is
18 eating the fish and conducted a survey of pier fishers
19 that they submitted into the record, and I have
20 additional copies here. The concerns with PCB are well
21 noted, but mercury and arsenic are also widely known.
22 Five different health risk studies over the last ten
23 years have documented these bioaccumulates existing in
24 the fish.

25 The result of EHC surveys showed that

1 58 percent of the people who fish from the piers ate
2 fish once a week 25 percent fish daily, that two-thirds
3 eat their catch, and 41 percent feed these to children.
4 Of the 109 people surveyed, 96 were people of color.
5 These surveys were done in English, Spanish and Tagalog.

6 The health risks for PCBs, like I said, are
7 well known. We would encourage future studies to
8 consider mercury, arsenic, DDT, cadmium, benzopyrene and
9 a host of other potential problems.

10 Then finally I'd like to pat the State Water
11 Board and the Regional Water Board on the back for the
12 copper listings in San Diego Bay. The State Board heard
13 us recently on a TMDL for the Shelter Island Yacht
14 Basin. At the time one of our major concerns for that
15 basin was that there were a number of other areas that
16 we knew had copper impairments but had not yet been
17 listed, and as a result, there was unfair playing field
18 for the marinas who would be subject to that TMDL and
19 around the rest of the bay, specifically in Chula Vista
20 Marina, America's Cup Harbor, Coronado Cave, Glorietta
21 Bay, Harbor Island east and west and the Marriott Marina
22 had similar impairments.

23 And the Regional Board and the environmental
24 community have come together to get that data before the
25 Board, and we appreciate listing all of those segments

1 that occurred.

2 Thank you very much.

3 VICE CHAIR SECUNDY: Thank you very much.

4 MS. JAMES: Good morning. My name is Kirsten

5 James, and I'm a staff scientist with Heal the Bay.

6 This morning I am representing the views of Heal the Bay

7 and RDC in Santa Monica Baykeeper and will be speaking

8 as a block. I apologize for the black-and-white copies

9 of our presentation. We had been anticipating a

10 projector, but hopefully this will do. We can e-mail

11 you color copies if that helps.

12 VICE CHAIR SECUNDY: It would help in reading

13 some of the charts.

14 MS. JAMES: Did you get the big copy that I

15 gave you?

16 VICE CHAIR SECUNDY: Yes. I got it already.

17 MS. JAMES: Okay. Great.

18 So at the September 30, 2004 State board

19 hearing adopting the 303(d) list listing policy, board

20 members foresaw today's workshop as a chance to make

21 sure that the policy is, in fact, working. We have

22 several technical and legal concerns with the proposed

23 interpretation and application of the listing policy.

24 As the State Board's application of the

25 listing policy will set precedence for future

1 application of the policy by the regional board, it is
2 important that these significant concerns be addressed
3 and resolved by the State Board in issuing this 2006
4 list. We strongly believe that the proposed revisions
5 are inconsistent with several aspects of the listing
6 policy.

7 A good example which demonstrates several of
8 these flaws can be found in the proposed delisting of 28
9 Santa Monica Bay beaches for beach closures. The State
10 is relying on two invalid lines of reasoning. First
11 they're stating that a TMDL exists. And secondly, we
12 believe that there is readily available data that shows
13 that all 28 beaches should remain listed.

14 To address this first point, an existing TMDL
15 alone is not valid justification to delist as shown in
16 that excerpted section of the listing policy. In fact,
17 beneficial uses need to be attained before it can be
18 taken off the list.

19 Our second point is that readily available
20 data do exist that show these 28 beaches should not be
21 delisted as seen in these two tables here.

22 These data are collected by Los Angeles County
23 health departments under A.B. 411 and are submitted to
24 the Beach Water Quality Work Group at the State Board.
25 There is no reason that can justify why these data were

1 not obtained during the State Board's review. And we
2 have done analysis of the last five years' worth of data
3 since 2000, and these data show that the 28 beaches
4 should be listed for some type of bacteria listing.

5 Another example of misapplication of several
6 portions of the listing policy is the proposed excess
7 alga growth delistings for Region 4. In contrast to the
8 staff's assertions, excess alga growth is, in fact, a
9 pollutant and narrative standards exist for nuisance
10 conditions.

11 In addition, a nitrogen TMDL alone may not be
12 the solution. And finally, qualitative information should
13 be considered under the situation specific weight of
14 evidence factor or best professional judgment.

15 Going back to the first point, excess alga
16 growth is a pollutant, and it is acknowledged later in
17 the staff report several times.

18 In addition, staff appears to disregard
19 narrative standards in their analysis. However, CFR
20 specifically requires the consideration of narrative
21 criteria for the purpose of delisting.

22 In this case, the L.A. Basin plan's narrative
23 objective acknowledge that excess alga growth can be a
24 nuisance and a pollutant. Moreover, the listing policy
25 itself recognizes nuisance conditions in making listing

1 decisions.

2 It is clear from the State Board's legal
3 counsel's stated interpretation of the statute of the
4 September 30, 2004 hearing that the State Board has no
5 choice but to list for nuisance conditions even if the
6 specific pollutant is not known.

7 Second, again, a TMDL is not a valid reason
8 for delisting. Even more problematic, there may be many
9 factors that influence alga growth such as phosphorus,
10 pH, sunlight. So a nitrogen TMDL alone is not likely to
11 resolve the problem.

12 Third, the listing policy provides a situation
13 specific weighted evidence factor. Looking at the
14 pictures, which hopefully you can make out in the
15 printed copies, it is clear that there is an alga
16 impairment in these water segments that are proposed for
17 delisting. But the State maintains that qualitative
18 information alone is not conclusive, and we feel that it
19 is, in fact, conclusive.

20 This is equivalent to a best professional
21 judgment approach that should be used in this instance
22 which can be applied to qualitative data as well as
23 knowledge of the water body. So in summary, the weight
24 of evidence does not have to include quantitative or
25 numeric evaluation.

1 This can also be seen with the Dominguez
2 Channel that has been mentioned previously. So I'll
3 just touch on it. There is a history of DDT in the
4 Dominguez Channel and estuary. The Montrose Chemical
5 Corporation was a huge polluter several decades ago, and
6 the channel and the estuary have been a conduit for much
7 of this pollution.

8 In addition, we know that DDT is a
9 biocumulative compound. So these two factors together
10 should apply under this situation specific weight of
11 evidence approach and remain listed.

12 Another final example is toxic pollutants and
13 sediment. There are no specific listing factors
14 provided in the listing policy for individual pollutants
15 and sediment. Thus the situation specific weight of
16 evidence factor should be used under Section 3.11 in the
17 listing policy to evaluate pollutants and sediment.

18 And now I will turn over a few of the legal
19 concerns to Heather Hoecherl.

20 VICE CHAIR SECUNDY: Thank you.

21 MS. HOECHERL: Good morning. My name is
22 Heather Hoecherl, and I am the science and policy
23 director at Heal the Bay.

24 I want to follow up on one of Kirsten's
25 points, which is, if you look at these algae pictures in

1 color, which we'll send to you, in one of them there's
2 an aerial photo. And when that's in color, you can't
3 even see that there's a creek running through there.
4 It's all green. You really can't distinguish the creek.
5 That's how much algae is there.

6 I have a couple more comments on the beaches,
7 but I'll make that in the context of my comments. So
8 I'm going to talk about the last five slides, if that
9 helps you guys.

10 And I'm going to start out with some
11 inconsistencies with the proposed approach to the Clean
12 Water Act. The first one is that we shouldn't be
13 reevaluating listings for which TMDLs have already been
14 adopted. It's not a valid reason to delist, and the
15 Clean Water Act itself clearly requires that water
16 quality standards be attained through the TMDL process
17 and that they shouldn't be taken off the list until
18 they're actually attained.

19 The beaches are a good example of that. So
20 I'll go back to Kirsten's discussion there. The Santa
21 Monica Bay TMDL used a site-specific reference site to
22 determine compliance, and that approach wasn't used in
23 the State Board evaluation of the data for delisting.
24 So there is a difference between the two ways that the
25 State Board went about it.

1 This was just a good reason why the Regional
2 Board maybe should be evaluating prior listings because
3 they're more familiar with what's going on in the region
4 in the approach used. And as you saw by the charts, if
5 you use the TMDL approach set forth in the TMDL using
6 the record site, those beaches should all remain listed
7 over the last five years of data.

8 There's another chart there too, the second
9 one. Those are L.A. County beaches that, based on the
10 same data, should have been listed and are not on the
11 proposed listing.

12 The second inconsistency with the Clean Water
13 Act is the very (inaudible) discussion, the weight of
14 the evidence factor, best professional judgment. The
15 way it's been applied it's essentially useless in the
16 listing policy.

17 It's our position, and I think the intention
18 of the Board, that quantitative data is not necessary to
19 apply the weight of the evidence factor, and we'd like
20 the Board to clarify that through the approval of the
21 list process.

22 Again, DDT in the Dominguez Channel has been
23 discussed, and this is an excellent example of where not
24 using that factor is a big problem. It's clearly
25 contaminated for DDT.

1 The third inconsistency is the inadequate
2 consideration of narrative standards that Kirsten talked
3 about, and the fourth one is the failure to review all
4 available -- readily available data which is
5 specifically required by the federal regs in the listing
6 process.

7 And we agree with EPA that this wasn't done
8 here and that it's improper not to do it. And again,
9 the beach data is a really good example as the State
10 Board does have access to most of that data.

11 Another big problem you see is three
12 additional factors that staff added as reasons for
13 delisting over and above the factors actually set forth
14 in the listing policy. Those three factors are that
15 data doesn't exist, and in application this also seems
16 to apply if there's some uncertainty as to whether the
17 data exists.

18 The other two are anecdotal data which, again,
19 falls under the best professional judgment of the
20 Regional Board and shouldn't be a reason to delist.

21 And the third one is set forth there on your
22 slide, and we'll go over it. But the staff specifically
23 stated that it included that third one in order to avoid
24 a larger burden for delisting which was contrary to the
25 board's express intent of the listing policy, which was

1 to have a higher standard for delisting than for listing
2 because it must have been some reason those were on the
3 list.

4 Finally, I would just say that the 303 regs
5 also address reasons to take -- valid reasons to take
6 off the list, and they don't include loss data or
7 anecdotal data.

8 There's some inconsistencies which is the
9 supplemental slide with the State Board's intent, and
10 that's one of them. (Inaudible) listing policy, one is
11 that it fails to take a precautionary approach. It
12 often errs on the side of not listing rather than
13 listing. And in part, that's failure to use the weight
14 of the evidence.

15 The Regional Board seems to be left out of the
16 process here. From the hearing transcripts, it seems
17 the original intent was to get the 2004 list out quickly
18 and have the regional boards do the 2006 list and all
19 future lists which would have included the delisting
20 evaluations which are much better done by the Regional
21 Board such as in the original listings and also know
22 their own water bodies.

23 The third is kind of an important item, and
24 that's a main goal of developing a listing policy was to
25 create a very transparent process. Here it's been

1 difficult to tell from the fact sheets how the different
2 multiple lines of evidence were weighed in making
3 different decisions and what actually some of the
4 decisions were based on. It's very difficult to tell in
5 many cases. So it isn't very transparent.

6 Finally, I just want to make some points about
7 the retroactive application of the listing policy. It
8 doesn't seem to be working very well with the proposed
9 revisions.

10 Just a few points. There should be a higher
11 burden of proof to delist as I said. This is
12 acknowledged in the staff report, but it doesn't seem to
13 be actually applied in letter or spirit. Indeed, the
14 State should show a lack of impairment before actually
15 taking things off the list.

16 That would be more protective of water
17 quality. It also would show the appropriate deference
18 to the previous listings which were administrative
19 decisions by Regional Board, approved by the State Board
20 and the EPA. So they're entitled to great deference
21 under extensive case law and should be considered more
22 heavily in making delisting decisions, especially where
23 there's no longer any data or there's uncertainty about
24 the data.

25 The third point is just the failure to use

1 best professional judgment, which I've already spoken
2 about. And finally, the Regional Board tends to have
3 better information on local water bodies, and if we are
4 going to evaluate prior listings, the Regional Board
5 should probably be the entity taking the first step at
6 that in recommending to the State Board.

7 All of these things are exacerbated by the
8 failure to use the weight of the evidence factor. As
9 we've seen I think in testimony already, the Regional
10 Boards are much better equipped for this and have all
11 current data available so -- and I would also say it's
12 appropriate -- the data is there at this point, and it
13 shows it shouldn't be delisted, which is more protective
14 of water quality.

15 I'm just going to wrap up just to say that the
16 proposed delistings overall seem to be riddled with
17 problems and inconsistencies and should not be adopted
18 as proposed. We would recommend another tier of review
19 to fix some of the problems or to leave it to the
20 regional boards in 2008.

21 Thank you.

22 VICE CHAIR SECUNDY: Thank you.

23 Mr. Beckman.

24 MR. BECKMAN: Good morning. I'm David Beckman
25 with NRDC. I'll try to be brief. I'm speaking as part

1 of this group of Santa Monica Bay Keeper, Heal the Bay
2 and NRDC, but my comments also are intended to summarize
3 for you five areas which I think are significant flaws
4 in the process that are systemic and affect the list
5 with respect to its entirety, not just the southern
6 portion of the state that you're here talking about.

7 I do want to acknowledge -- and I think we all
8 do -- what some other speakers have mentioned which is
9 that this is a significant task, to say the least, to
10 put the list together and that Craig and his group do
11 not have necessarily the resources that they need.

12 And I think that's something, Mr. Secundy,
13 that you and the Board and senior staff need to consider
14 in terms of providing perhaps some additional resources
15 and some additional time so that the folks who are
16 tasked with this big job can finish it.

17 I think we would all agree that since the
18 303(d) list and the TMDL program provide the safety net
19 for the State's water quality regulatory program, that
20 it's essential that that safety net be solid and strong
21 and that the appropriate water bodies that should be on
22 the list be on the list.

23 So with that, here are the five basic problems
24 or five systemic problems. That is not to say these are
25 the only important issues, and we're going to give you

1 detailed comments.

2 But I think for you, Mr. Secundy, take away
3 today, one is the failure to review all readily
4 available information that's been mentioned before.
5 This is required by the listing guidance, and it's
6 required by the Clean Water Act regulations. Therefore,
7 it has to happen. The list is invalid. It's illegal.
8 It will be successfully challenged if not corrected by
9 the EPA unless these problems are fixed.

10 They can be fixed, and there's probably
11 efficient ways that we can do this that does not disrupt
12 your schedule. But it's essential that the Board make
13 sure that the problems are fixed and that Craig's unit
14 gets the resources and the direction to do that.

15 How do you know that this has occurred? Well,
16 everyone said so far, including EPA -- I think if you
17 talk candidly to staff, they'll tell you that they have
18 not been able in all instances to review all readily
19 available information.

20 How else do you know it? If you want to make
21 this decision yourself and judge the different comments,
22 look at the Santa Monica beach example. What can be a
23 more prominent set of water bodies in California than
24 Southern California beaches? Yet the submittals you're
25 going to get in two weeks and that's summarized in your

1 overview demonstrates there's all sorts of information
2 that demonstrates impairment that's relevant information
3 that was not considered. If that happening in Santa
4 Monica Bay beaches, you can imagine that it's indicative
5 of a broader issue.

6 Number two, there has been a failure
7 systemically to utilize the weight of evidence best
8 professional judgment fallback which was heavily
9 negotiated among stakeholders prior to you joining the
10 Board, Mr. Secundy. I'm sorry that packet or Richard
11 Katz are not here.

12 But one of the reasons that there was no
13 litigation over this guidance was that there was an
14 agreement that there be a weight of evidence fallback
15 position to deal with situations in which the strict
16 application of the guidance would be arbitrary and
17 capricious if not supported by evidence.

18 However, in a number of instances, the best
19 professional judgment approach has not been utilized,
20 and it's not been utilized in a couple of respects.

21 One, the regional boards often have the best
22 professional judgment about waters within their region.
23 It's impossible for even the best staff in Sacramento to
24 know every detail. And by not involving the regional
25 boards formally in this process, you have failed

1 essentially to use part of the guidance that you are
2 compelled to use.

3 Section 6.2 and 6.3 explicitly comprehend that
4 the regional boards would prepare the list this time.
5 So that didn't happen, and that's inconsistent with the
6 guidance. And because of the fact that there's so many
7 good resources -- Mr. Shay is a great example of the
8 expertise that is present in the regional boards --
9 you're not getting a complete picture and you're not
10 using the guidance that you committed to use fully when
11 you're not looking to the regional boards for more
12 information.

13 The third significant problem is the one I
14 just mentioned, but I think it's sort of independent of
15 best professional judgment, and that is just that the
16 regional boards did not do the list. That's what was
17 supposed to happen under 6.2 and 6.3 of the guidance.
18 It didn't happen. That's inconsistent with the
19 guidance. It's inconsistent with the whole point of
20 having a guidance document, and it reflects a lot of
21 problems as Heather and others have indicated.

22 Fourth big issue is the issue of delisting
23 for, quote, unquote no data or as Marcos said, the loss
24 of homework excuse. And I would add to that a related
25 issue where there is allegedly a lack of a quote,

1 unquote, acceptable guideline for a determining
2 impairment.

3 There is obviously a presumption that the work
4 you all have done in the past is valid unless there's
5 evidence to the contrary. But this approach with
6 delisting with no data or saying that there isn't or
7 wasn't an acceptable guideline just turns that
8 presumption on its head. There has to be some
9 affirmative evidence of a lack of impairment to overcome
10 a previous decision that a water body is impaired.

11 That's obviously a point. I trust your
12 counsel knows it because you all always cite in any kind
13 of litigation what you're defending that your decisions
14 are due deference and that administrative decisions in
15 general are presumed to be regular and accurate and
16 properly taken. That is, in fact, the law.

17 So you can't just say, "Well, you know, we're
18 going to change our mind. There's no data or we can't
19 find the data or we're going to decide retroactively
20 that the guideline was not appropriate."

21 And in this connection, Heather was
22 mentioning, and I would add, that the additional
23 rationales in the staff report that are not in the
24 guidelines on which some of these decisions are based in
25 my view constitute underground regs and are illegal and

1 you cannot rely on them.

2 The whole point of the regulatory process we
3 went through prior to your joining the Board,
4 Mr. Secundy, that went on for two and a half years was
5 to get clear guidelines that went through the process.
6 We're not going to be adding things. It's not
7 appropriate to add things later to rationalize decisions
8 that you make wish to take. It's an underground reg.

9 Fifth and finally, the narrative issue,
10 narrative standards. Peter Kozelka references a little
11 bit. Some others have. This is typified by a proposal
12 to delist several water bodies when nuisance conditions
13 exist because the framed nuisance condition is not
14 considered to be a water quality standard.

15 Obviously the Board exists to take care of
16 pollution and nuisance conditions. You don't have to be
17 a scientist to think there's something odd when you have
18 a nuisance condition and you're proposing to delist. In
19 every instance in which a narrative standard was the
20 basis for delisting or the basis for original listing,
21 it's imperative that that standard be reviewed not just
22 against a numeric guideline but against other available
23 lines of information and reasoning.

24 The whole reason the Clean Water Act has
25 numeric and narrative standards is because there's the

1 recognition that numbers cannot always fully
2 characterize the kind of water quality conditions that
3 we wish to have.

4 The problem with the approach that's been
5 taken so far is that narrative standards are treated
6 like, you know, second-class citizens. And only when
7 there are some numeric reference, at least in the review
8 we've done so far. Only where you have some numeric
9 reference have you upheld some of these narrative
10 listings. And that has to be fixed, too, for obvious
11 reasons.

12 You can't acknowledge a nuisance and take it
13 off the list. It just doesn't make any sense to do
14 that.

15 So those are sort of the five basic areas that
16 we think need to be fixed. We think they can be fixed
17 consistent with the schedule of finishing the list this
18 year. I don't know whether it's essentially due by
19 April 1st or not. But certainly what's most important
20 is that after literally two and a half years where
21 stakeholders from all different segments of interest and
22 participation worked on this policy, we got it to a
23 place where we weren't all necessarily thrilled with
24 every aspect of it, but there was no litigation, which
25 is quite an accomplishment these days.

1 It's really essential that you take the time,
2 provide the resources to Craig and his group to finish
3 the job so that everybody can be assured that this list
4 is consistent with the Clean Water Act, consistent with
5 the guidance and will meet with EPA approval.

6 Thank you very much.

7 VICE CHAIR SECUNDY: Just a couple comments
8 and a question, Mr. Beckman. I'm assuming you will send
9 me that very succinct list of five issues?

10 MR. BECKMAN: Yes, with the understanding that
11 it's not the only set of issues.

12 VICE CHAIR SECUNDY: I understand. Very
13 clear, very cogent. I was not here when this all took
14 place obviously. That is one of the detriments of
15 having new Board members that we do have to play catch
16 up.

17 So I'm just going to ask some questions
18 publicly, and I'm going to turn to my staff. Why were
19 the regional boards not involved in this particular
20 aspect?

21 MR. WILSON: When we developed a list, there
22 was a decision made that the State Board would develop
23 the '04 list. It became apparent that there was so much
24 information that was provided into our record and all of
25 the swamp data that we converted that into the '06 list

1 because we had so much work to do.

2 Each of the regional boards was involved in
3 review of absolutely all of the fact sheets. They
4 looked at everything. They gave us feedback. To the
5 extent we could, we incorporated the comments and
6 feedback we got from the regional boards. And that was
7 incorporated before it was released September 30.

8 VICE CHAIR SECUNDY: I guess my next question.
9 We'll call it the precautionary principle. Why do we
10 delist water bodies -- I'm just asking this out loud --
11 if indeed we feel, quote, the data is no longer there,
12 if indeed the data was there once upon a time, i.e.,
13 your loss of homework example?

14 MR. WILSON: I really enjoy hearing the lost
15 homework name put on it. We were trying to be polite
16 about it. When we invoke that statement, there was
17 absolutely no basis for the listing in the first place.

18 That did not come from the State Board staff.
19 That came from the Regional Board staff. We did not
20 create any of those recommendations to delist. It was
21 based on their recommendations to us because there was
22 nothing available.

23 MR. BECKMAN: Can I just mention a partial
24 response to your question, if that's okay?

25 VICE CHAIR SECUNDY: Sure.

1 MR. BECKMAN: I think there's some varying
2 opinions about the way in which the regional boards were
3 consulted, and I'm not sure that Craig's perspective is
4 shared by all Regional Board staff with an interest in
5 the issue.

6 There is also a more fundamental point, which
7 is that the listing guidance says that the regional
8 boards are going to prepare the lists, and the response
9 you got from Mr. Wilson doesn't really address that
10 specific point.

11 The regional boards clearly have not prepared
12 the lists. The guidance in that respect has not been
13 implemented. Why does it matter? It matters because
14 it's one thing to say the State or the regional boards
15 can't do something because of a lack of resources. It's
16 another thing not to use resources that are available to
17 produce the best possible product.

18 And I think the approach at this point is to
19 at least involve the regional boards in some second tier
20 or third tier review process to make sure that all the
21 information is present. We have a number of specific
22 examples which we have not tried to mention today
23 because of time and a lot of people who need to get up
24 here and speak where there are -- there is evidence that
25 Craig or his staff says "no data, delist," and data

1 exists. So clearly there's a disconnect that needs to
2 be closed.

3 VICE CHAIR SECUNDY: Thank you very much.
4 Ileene Anderson.

5 MS. ANDERSON: Good morning.

6 VICE CHAIR SECUNDY: Good morning.

7 MS. ANDERSON: Ileene Anderson. I'm an
8 ecologist for the Center for Biological Diversity. And
9 I'm here today to specifically talk about Santa Mateo
10 Creek, which is a tributary to the Santa Ana River, and
11 San Mateo is on the EPA 305(b) list. It's been on there
12 since at least 2005 listed as impaired. It's still not
13 on the proposed 303(d) list, and we wonder why.

14 So I've been working with the local staff, and
15 they helped me by pointing me to your website with the
16 forms for the 303(d) list nomination, and I found them.
17 No problem. They're technical. They appear to be
18 comprehensive, but I surely didn't find them very
19 user-friendly.

20 Obviously, we're late to the dance. We are
21 not nearly as sophisticated on these issues, but still
22 contention remains that San Mateo Creek has been listed
23 impaired since 2002 and should be included on the 303(d)
24 list this time around.

25 So I just felt that this sort of overarching

1 question as to why it wasn't found to be appropriate for
2 the list, and we certainly look forward to working with
3 your staff to explore the issue and submit these as
4 written comments.

5 VICE CHAIR SECUNDY: I can't answer that off
6 the top of my head, but we will absolutely take a look
7 at it and find out why.

8 MS. ANDERSON: Great. Thank you.

9 VICE CHAIR SECUNDY: Thank you for bringing it
10 to our attention.

11 Dana Palmer.

12 MR. PALMER: Good morning. Good morning,
13 Member Secundy and Mr. Wilson, Mr. Counsel. Good to see
14 you this morning.

15 My predecessors from Heal the Bay and NRDC
16 have voiced my concerns very clearly. So I don't want
17 to repeat any --

18 VICE CHAIR SECUNDY: Then you can just say
19 "ditto" and sit down.

20 MR. PALMER: I could, but I won't. I'll be
21 very brief. I'm Dana Palmer, staff attorney from Santa
22 Monica Baykeeper here also representing California
23 Coastkeeper Alliance and Linda Sheehan, who sends her
24 regards. She couldn't be here this morning.

25 Let me just thank the State water Board staff.

1 This is a huge project. You have taken herculean
2 efforts thus far, and we appreciate them. We know you
3 don't have enough staff to do the job correctly, and
4 that's probably why we disagree with you on some of the
5 issues this morning.

6 We do think that a lot of these issues can be
7 corrected in the next few weeks or months, and thank you
8 also for extending the written comment deadline to
9 mid-January. We will be submitting very thorough
10 written comments in these proceedings.

11 Let me just briefly focus on a few areas.
12 First of all, Baykeeper strongly believes that the 28
13 Santa Monica Bay beaches have been improperly delisted.
14 You heard about that this morning.

15 Many of these proposed delistings have been
16 based on the fact that a TMDL now exists. And as we all
17 know, a TMDL is merely a pile of paper and its existence
18 does not mean that water quality standards have been
19 attained.

20 Secondly, the 303 listing process should fully
21 recognize narrative criteria and the basin plans.
22 You've already heard about that this morning. Well,
23 that's a 40 CFR 130.7(b)(3).

24 And, thirdly, the narrow application situation
25 specific weight of evidence factors is not consistent

1 with the intent of the listing policy. I think you
2 might have already heard about that too this morning.

3 And fourth and finally, the points that we
4 made -- you heard from groups from Southern California
5 today, but I think the points that we all made are --
6 could be applied statewide. They're points of general
7 statewide importance.

8 I'm sure that when you look to the rivers on
9 the north coast or the base on the central coast, you'll
10 see that many of the same general points we made this
11 morning also apply there.

12 Thank you very much.

13 VICE CHAIR SECUNDY: Thank you.

14 Is there anyone else from the environmental
15 community or state or federal agencies that submitted a
16 card who's not spoken?

17 All right. Why don't I suggest we take about
18 a five-minute break. We still have a number of cards.
19 Looks like about a dozen cards. Maybe a few more to go
20 through. So five minutes. It's 12:20. Excuse me.
21 11:20. Let's come back at is 11:25.

22 (Recess taken.)

23 VICE CHAIR SECUNDY: We're going to begin
24 again. We're going to begin the workshop again. If you
25 have a cell phone and it's on, can you please turn it

1 off. Thank you.

2 All right. We are going to turn to the
3 regulated community. Richard Watson.

4 MR. WATSON: I see we have a new approach
5 here. Thank you, Mr. Secundy. Today I am before you
6 representing the Coalition for Practical Regulation,
7 which is a local government organization of some 41
8 cities in Los Angeles County.

9 I want to thank you for having this session
10 here so that we can make comments to you on the 303(d)
11 list. We'll make more extensive comments in written
12 form by the January 17 deadline unless you are so kind
13 as to extend that and give us a little bit more time to
14 review things. And some time was lost during the
15 vacation or holiday period. I'd like to commend the
16 staff.

17 VICE CHAIR SECUNDY: Some of us actually
18 worked during the holiday period.

19 MR. WATSON: Some of us did both.

20 First I'd like to commend staff. I think the
21 staff has done a lot to improve the 303(d) list. You've
22 heard some comments from others. We think that they've
23 made a number of recommendations for delistings where
24 pollutant segments would not have been appropriate or
25 not identified and things were listed inappropriately in

1 the first place.

2 We are particularly pleased with the
3 recommended delistings for conditions where the actual
4 pollutants are not identified. After all, the federal
5 regs and the 303(d) list is intended to deal with
6 pollutants, not nuisance. It's with pollutants. So we
7 need to know what those pollutants are.

8 Since the 303(d) list drives the (inaudible)
9 TMDL, it's kind of hard to do a TMDL when you don't know
10 what pollutants to address. So we're pleased that the
11 staff is making that effort. We think it's real
12 progress in making the list a much more technically
13 solid basis for setting water quality priorities, and I
14 think this indicates that the staff acknowledges the
15 importance of the 303(d) list and the scientific
16 integrity that should be the basis of that.

17 However, we are concerned with a number of
18 remaining listings that may not be based on science.
19 State Board staff has recommended 92 listings for
20 Region 4, many of which are for potential uses, not for
21 probable future uses.

22 California Water Code Section 13241 lists
23 past, present, and probable future beneficial uses to be
24 protected through the establishment of water quality
25 objectives, and these things should be considered in the

1 303(d) list.

2 I'm trying to skip over a couple things.

3 There was some discussion by the Heal the Bay
4 about revising perhaps the listing policy. If you do
5 consider that, we suggest that you make very clear in
6 the listing policy that only exceeding water quality
7 standards for probable future beneficial uses should be
8 the basis for 303(d) listings.

9 We'd also like to remind you that the combined
10 303(d) TMDL processes are intended, as mentioned
11 earlier, as a backstop or safety net to ensure a team of
12 water quality standards and that the listing process has
13 been vastly improved since the State Board staff was
14 assigned responsibility with the 2002 list and now this
15 sort of hybrid 2004, 2006 list.

16 In many of the previous listings, I don't
17 think just the homework was lost. I think there was no
18 homework in some cases. So I think your staff is to be
19 commended for trying to make sure that the listings are
20 solid and that they're supported by evidence, and so we
21 think they've done a really good job in this regard.

22 And we support a continued division of labor
23 in this area where the State Board develops a 303(d)
24 list in consultation with the regional boards and the
25 regional boards focus on the water quality standards and

1 the development of TMDLs and other programs that will
2 address the impaired waters.

3 I think having the State board have the
4 oversight has just made a world of difference in getting
5 a technically solid improvement or list.

6 One improvement we would like to suggest,
7 however, is that data and data analyses used to support
8 the list and the analysis be made available through the
9 appropriate State Board offices -- or excuse me --
10 Regional Board offices so that municipalities, other
11 permittees, planning groups and others have more easy
12 access to the data for taking a look at it so you don't
13 have to traipse up to Sacramento to take a look at the
14 data, and that would help us all in the long run.

15 We appreciate the work that you've already put
16 into approving the list, and we hope that you'll
17 continue to make improvements in this list so it focuses
18 on real pollutants and real problems, and we look
19 forward to working with you in the future.

20 Thank you.

21 VICE CHAIR SECUNDY: Thank you very much.

22 The next three speakers are speaking in
23 tandem. Rick Alexander, Jeff Pasek and finally Ruth
24 Kolb. Is it Ruth Kolb?

25 MR. ALEXANDER: Thanks and good morning, Vice

1 Chairman Secundy, State Board staff and counsel. I'm
2 Rick Alexander. I represent the Sweetwater Authority.

3 We are a public water agency in San Diego
4 County. We provide water service to the cities,
5 National City, Chula Vista and the incorporated Bonita
6 community, about 200,000 customers in total.

7 We do this in part by operating two
8 reservoirs, the Sweetwater Reservoir in the Spring
9 Valley area at about 26,000 acre feet, and then our
10 Mountain Reservoir at Loveland, 17 miles upstream at
11 about 29,000 acre feet.

12 This two-reservoir system is important to us
13 because it enables us to capture and use a significant
14 amount of local water. This is very good because it --
15 not only is the cost lower, but it means that that water
16 does not have to be imported from someplace else.

17 In 1998 and '99, we were able to go for a
18 period of 20 months without buying a tablespoon of
19 imported water. And so that's why we are kind of
20 myopic, I think would be the word, about maintenance of
21 water quality within our watershed.

22 Both of our reservoirs are proposed for
23 listing for multiple constituents: Dissolved oxygen and
24 total dissolved solids at Sweetwater, manganese,
25 aluminum and dissolved oxygen at Loveland in the

1 mountains.

2 Interestingly, we learned about this listing
3 or this proposed listing from an article in the
4 San Diego Union on November the 18th. The Union is a
5 sometimes reliable source of data, and in this case it
6 proved to be. Unfortunately, we never heard about this
7 proposed listing from either the State or the Regional
8 Board, and we have operated these reservoirs for many
9 decades.

10 So we sent a letter to Ms. Potter on
11 December 20th requesting that the comment period be
12 extended again, and we hoped that she would place that
13 under consideration. There are certain small reservoir
14 operators that are part of the world who still aren't
15 aware of this even though we've tried to get the word
16 around.

17 We don't think that the listing, just speaking
18 of our two reservoirs. We don't think that the listings
19 would benefit our region's water quality or our
20 customers' water quality for a number of reasons. At
21 Loveland, aluminum and manganese are naturally occurring
22 elements which are coming into that reservoir from a
23 completely undeveloped area. There is no discharge
24 associated with that. This is simply metals which are
25 entering as a result of the natural flow of water.

1 At that lake also, levels of dissolved oxygen
2 in that Sweetwater are a result of stratification of the
3 lakes during the summertime, and we've been diligent in
4 supporting data to the State Regional Board, and I
5 presume that's where this listing is coming from.

6 But stratification is a natural process which
7 causes dissolved oxygen levels to fluctuate very widely
8 during different times of the year. It's a natural
9 process over which -- which occurs in all lakes and over
10 which we have no control.

11 Finally, on the TDS levels, the total
12 dissolved solids, our Sweetwater reservoir, as are many
13 other reservoirs in San Diego County, recipients of
14 imported water from either Northern California, the Bay
15 Delta, or from the Colorado River. The TDS of that
16 imported water exceeds the TDS which is shown in the
17 basin plan.

18 There's a problem. If we cannot regulate --
19 we cannot regulate the TDS as imported water, and so
20 consequently, if we're bringing water into our lake, the
21 total dissolved solids already exceed the basin plan
22 limit. There's precious little that we can do about it.

23 At our Sweetwater reservoir, for example, we
24 put \$12 million into an urban runoff diversion system
25 specifically to manage TDS and the runoff from the

1 rapidly urbanizing community. We have no control over
2 the TDS of imported water.

3 So I guess, in summary, there's three things
4 that we would like for the State Board to consider.
5 Jeff Pasek, who, Mr. Secundy, you mentioned, will be
6 following me; and one of the things that he's going to
7 say is that language should be considered which would
8 exempt from listing waters designated MUN or for
9 municipal use which are subject to natural impacts to
10 the watersheds, unavoidable natural processes like
11 season stratification and from the storage of imported
12 water. It doesn't make any sense to list those water
13 bodies for those constituents.

14 We would like, once again, for you to extend
15 the time period to comment so that other water agencies
16 will have an opportunity to, for lack of a better
17 phrase, weigh in on this topic.

18 And, finally, we really appreciate the
19 partnership with the State Board and the Regional Board,
20 and I think that we are natural allies in protecting
21 these watersheds which are producing water for human
22 consumption on a regular basis and in significant
23 quantity.

24 And we really, however, encourage that a more
25 collaborative process be adopted in finalizing the

1 303(d) list. The water agencies, I think, are also
2 eager to know how you get into this club or how you
3 participate in this collaborative process because we
4 would like to be at the table, and we would like to be a
5 part of it because the stakes for us are so very high.

6 I appreciate your time and thank you for
7 coming down to Pasadena.

8 VICE CHAIR SECUNDY: Thank you. It was easy
9 for me since I live here. Actually the first time since
10 I got on the Board. So this was a pleasure. Probably
11 the only time it's ever going to occur, but I'm
12 delighted this one is in Pasadena.

13 A couple of things. In terms of notification,
14 I simply don't know who dropped the ball there. I do
15 apologize for that. I think we're probably very used to
16 dealing with water bodies like the Santa Monica Bay or
17 the L.A. River. (Inaudible) not owned by any particular
18 entity, and reservoirs are obviously a very different
19 entity. So I don't know why either the State nor the
20 regional boards notified you of that.

21 And then as far as the extension of time, that
22 is something we will seriously consider. You are not
23 the only entity that has asked for that extension. So
24 after this hearing I will get together with our chair to
25 determine whether or not it will be appropriate to

1 extend this time period.

2 MR. ALEXANDER: Thank you very much.

3 VICE CHAIR SECUNDY: You're welcome.

4 Mr. Pasek.

5 MR. PASEK: Good morning. And thank you,
6 Mr. Secundy, and staff and counsel. My name is Jeff
7 Pasek. I'm a biologist and watershed manager for the
8 City of San Diego Water Department, and most of what I
9 might say has already been said by Rick Alexander. So I
10 will say "ditto," but there's a few things I might
11 amplify.

12 Some background, the San Diego Water
13 Department supplies drinking water to 1.3 million people
14 in the City of San Diego and neighboring communities,
15 and important for today is that we operate nine drinking
16 water reservoirs in San Diego County which collect
17 runoff from 926 square miles and also, very importantly,
18 store imported water from the Colorado River and
19 Northern California.

20 Clearly we're concerned about the discharge of
21 pollutants in the upstream areas of these reservoirs,
22 and we see the State Board, the Regional Board, and the
23 Clean Water Act 303(d) policy as natural allies in our
24 efforts to protect these drinking waters.

25 Nonetheless, we think there's some flaws in

1 the proposed listings. All nine of the City of
2 San Diego's reservoirs are proposed for listing for 37
3 different constituents, and it's significant that every
4 piece of the data that went into those proposed listings
5 was collected by our agency and provided to the -- to
6 this Regional Board and State Board.

7 And we collected that data because we are a
8 drinking water agency, and we were collecting water to
9 be in compliance -- I'm sorry -- collecting data to be
10 in compliance with the Safe Drinking Water Act and to
11 operate our system effectively.

12 Some points have already been made, but I want
13 to amplify first the data that was used is only a very
14 small portion of the total data set that we have
15 available, and we believe that if the full data set even
16 in the established time span were considered, that it
17 would result in a different outcome in many cases.

18 It will result and not -- the water body
19 pollutant combination not being on the list. So we urge
20 that data be considered, and we are eager to work with
21 the State and Regional Board staff to get that data to
22 you.

23 Like Rick Alexander said, the listing of
24 reservoirs that store imported water for TDS and for the
25 major salt components of TDS is a real difficulty, and

1 just to amplify that, San Vicente Reservoir, which is
2 the keystone of the regional water system in San Diego
3 County, is listed for TDS, and the basin plan standard
4 for TDS for San Vicente is 300 milligrams per liter.
5 Imported water coming into that reservoir is 500
6 milligrams per liter. It is essentially impossible for
7 that reservoir to meet the basic plan standard.

8 Many of the proposed listings for San Diego's
9 reservoirs are for water quality constituents that are
10 strictly the result of naturally occurring processes or
11 natural sources, and there is no discharge of these
12 constituents, and examples of this are the listings of
13 reservoirs for color, pH, iron and manganese. And we
14 will supply extensive comments about why we think that
15 that's inappropriate for those to be listed.

16 And on a final point, we're concerned about
17 the implications of the listing of a water supply
18 reservoir as impaired for our uses of that reservoir as
19 its source of supply for drinking water. We understand
20 that there's no statutory -- no likelihood of any sort
21 of statutory limitation of the use of that reservoir as
22 a drinking water supply as a result of the impaired
23 listing.

24 We want to make sure that that's true, and we
25 also suggest that that be explicitly stated in this

1 process in the documents having to do with the listing.

2 We will be supplying extensive written
3 comments by the deadline, and like Mr. Alexander said,
4 we seek to have an extension of the comment deadline.

5 Thank you.

6 VICE CHAIR SECUNDY: Thank you.

7 Ruth Kolb.

8 MS. KOLB: Good morning. My name is Ruth
9 Kolb. I'm a biologist stormwater specialist with the
10 City of San Diego. I'd like to take this time to
11 appreciate -- or to extend our appreciation to the State
12 Water Board for developing the listing, delisting policy
13 as it is commonly known. We know it was a large effort,
14 and we appreciate bringing some consistency across the
15 State on this issue.

16 I'd like to provide some comments other than
17 reservoir issues as you've just heard my colleagues
18 discuss in regards to the Region 9 information.

19 Regarding listing proposals, for Los
20 Penasquitos Creek currently is listed or proposed to be
21 listed for phosphate and total dissolved solids. These
22 listings are based upon two and four samples for each
23 listing which does not meet the criteria for the Table
24 3.2 in the policy for the minimum number of measured
25 exceedances needed to place the segment on the list for

1 conventional and other pollutants. It does state that
2 five is the minimum number required.

3 In the America -- or San Diego Bay America's
4 Cup Harbor, Harbor Island east and west of the Marriott
5 Marina listing for copper, we recommend that you list it
6 or state whether it's for total copper or dissolved
7 copper or for both.

8 Regarding the delisting proposals, the City of
9 San Diego supports most of the delisting recommendations
10 for the coastal beaches. We did provide review of the
11 County Department of Environmental Health speech posting
12 data, reviewing data for approximately four years
13 providing information that these beaches did meet the
14 delisting criteria.

15 However, we do not recommend the delisting of
16 PB Point. That beach does have chronic exceedances,
17 continues to have chronic exceedances, and we are -- the
18 City of San Diego is currently conducting a study to try
19 and find out what those sources are and what management
20 steps or actions can be taken to reduce the number of
21 exceedances at that beach, which is approximately
22 one-tenth of a mile in size, and I provide more on that
23 in our written comments that will be provided later this
24 month.

25 Regarding requested area changes, Chollas

1 Creek has a request to extend the area by .5 miles to
2 the south fork. In the document it states that this is
3 based upon an e-mail from Regional Board staff. We'd
4 like to see the evidence that was provided to extend
5 this just to see the evidence.

6 The Mission Bay shoreline requested area
7 change doesn't really have an explanation of what the
8 area change is, and since that is wholly within the City
9 of San Diego, we'd like to be able to review that
10 recommendation and comment on it at some later date.

11 Regarding the TMDL schedule, we recommend
12 reviewing the draft schedule that's in the document
13 because four of the TMDLs within our boundaries exceed
14 the time limit of 2005 that's listed in the documents,
15 and we may want to go back and review that.

16 And generally speaking, we were -- the City of
17 San Diego's interested to know whether or not there will
18 be a CEQA document prepared on this list or not so we
19 can provide comments on that.

20 And again, we will provide written comments by
21 the due date. Thank you.

22 VICE CHAIR SECUNDY: Thank you.

23 We are now going to hear from a number of
24 individual cities. Ken Farsing, City of Signal Hill.

25 MR. FARSING: Good morning, Board member

1 Secundy and staff. Excuse me. I've got a cold. So
2 just bear with me.

3 My name is Ken Farsing. I'm a city manager
4 for Signal Hill, and I want to thank you for the
5 opportunity to comment today. We'll be submitting more
6 extensive written comments. So I'm just going to
7 briefly summarize our main concern.

8 I'm commenting on Region 4, 303(d) list in
9 Region 4. First we really do want to reiterate what
10 many of the speakers have said. We want to thank the
11 State Board and the staff for the recommended changes
12 and the improvement to the 303(d) listing process. We
13 think this process makes a lot more sense, and it's a
14 very logical process at this point in time.

15 Now, as part of the process, what we've
16 noticed is that the staff is recommending to listing
17 erroneously listed water body pollutant combinations
18 including those from which data demonstrated that the
19 water standards are not exceeded.

20 We've heard today that there's basically
21 delistings where no data was ever submitted, but we have
22 a listing. Now, what we would like to do is recommend
23 that the amendments go a bit further toward making the
24 303(d) list a focused and reasonable road map for TMDL
25 development. The list still contains many listings that

1 should not be included. And particularly, I want to
2 comment on what are known as potential future uses
3 rather than probable future uses.

4 Now, potential to us is an unreasonably broad
5 concept on which to base the list. In the case of the
6 303(d) list, the water quality in California, listings
7 based on potential future uses could be disastrous.
8 Cities could be forced to spend untold millions of
9 dollars to implement the TMDLs triggered by uses that do
10 not exist and are not likely to exist.

11 For instance, there are several flood control
12 channels and washes listed in the Los Angeles region
13 basin plan as having potential Rec 1 uses, but these
14 concrete-lined channels are specifically access
15 prohibited during dry weather and wet weather
16 situations. The channels are not waters for body
17 contact recreation, and the City should not be required
18 to spend money to protect nonexistent uses that are, in
19 fact, prohibited.

20 The State budget, very similar to municipal
21 budgets, is already strained, and the imposition of
22 costly TMDLs with no specific proven benefit is going to
23 generate a series of problems and more problems than
24 solutions.

25 Now, the State Board recognized that

1 designation of potential beneficial uses were not
2 appropriate when you approve the use attainability
3 analysis revising the Rec 1 uses for the Ballona Creek
4 indicating that there were no plans in place or funding
5 available to remove the flood control channel and return
6 it to a natural stream nor was it expected that this
7 plan to turn this into a natural stream or funding to do
8 it would be available in the near future.

9 Our Regional Board, as Renee indicated, also
10 adopted a wet weather exemption from Rec 1 uses in
11 engineered flood control channels in Los Angeles County
12 during major storm events in recognition that these
13 channels present a danger to the public during rain
14 events. Just the last rain we had over New Year's,
15 there were four people that were washed down the L.A.
16 River alone.

17 What California's communities need are basin
18 plans and a 303(d) list that are consistent with the
19 California Water Code Section 13241, and that specifies
20 establishment of water quality objectives to protect
21 past, present and probable future uses.

22 Extraneous listings for potential future uses
23 such as Rec 1 for water body segments where people have
24 not, do not, and would not be reasonably expected to
25 ever swim only add unnecessary complexity and expense to

1 this whole process.

2 Now, we would strongly suggest that the Board
3 apply these principles, these three general categories,
4 to the beneficial uses. Again, I want to thank you for
5 the time for comments today.

6 VICE CHAIR SECUNDY: Thank you.

7 Dr. Gerry Greene, City of Downey.

8 DR. GREENE: Thank you for the opportunity to
9 speak today, and I'd like to reference back to what Ken
10 Farsing and Ms. Watson just said and, in particular,
11 acknowledge the State staff effort in what is a very
12 significant document. Thousands of pages, did you say?

13 Having said that, I would like to focus on a
14 little different aspect of this, and that is the
15 importance of making sure that the listings are
16 appropriately placed. We appreciate the many
17 delistings, but it also points to the challenge that
18 listing is a significant effort. It commits a
19 significant effort of state and local staff time.

20 Please make sure that the listings that come
21 in are strongly supported and not, as was once told to
22 me on one of the delists, the efforts of an overly
23 motivated intern. We need to have rules. We need to
24 have these listings go forth to be targeting and
25 focusing on the issues at hand.

1 As another example, I recently had the
2 privilege of authorizing -- signing off would be a good
3 way of phrasing it -- on a CBS unit that was approved
4 for installation on our city over four years ago to
5 patrol trash in a site. We now know that that CBS unit
6 will be addressing a watershed that is not going to have
7 a trash listing for a long time, if ever. It will have
8 a bacteria listing which CBS units often have a
9 challenge for.

10 So essentially I was approving a device that
11 we allowed, that we authorized four years before I
12 joined the city even, that will probably be worsening my
13 bacteria problem while eliminating a trash problem that
14 may not even have a listing in the future.

15 Similarly, another delisting -- so to a degree
16 this is something that we're happy to see, but we would
17 like to point it out as the challenges could arise.
18 There's a listing for abnormal fish (inaudible) to be
19 delisted.

20 If, when I first joined the City three and a
21 half years ago that had been my focus, I would have
22 probably had a lot of very angry developers at this
23 point who I forced advanced technologies on who knows
24 what to try to control this challenge, and it's now
25 gone.

1 A listing is a long term and significant
2 commitment of not just State staff, local staff,
3 developers, maintenance staff. We need to make sure
4 that these listings are very carefully considered and
5 very well supported.

6 Shifting gears. When it rains, it pours. You
7 made the allusion about being in over the holidays.
8 Well, we had the privilege of having about three inches
9 of rain over the last week. This is essentially the
10 design storm for L.A. County for slue sumps. We only
11 expect twelve inches of rain. Slue sump is based on
12 85 percent storms. So three inches of rain -- this
13 should be the only time this year that my slue sumps
14 overflow.

15 I was out checking my slue sumps this week,
16 finding the devices that didn't work, filters that were
17 supposed to pass a hundred gallons per minute not
18 passing a cup per minute.

19 We have not reached the point where we know of
20 many types of best professional judgment, and I realize
21 we're talking about different judgments now. What I'm
22 talking about is our knowledge of BMPs and the removal
23 of pollutants and the cost effectiveness.

24 I mentioned the CBS a few moments ago. We
25 very recently had a meeting with Regional Board staff

1 where a staff member made the allusion the cities knew
2 that those inserts that they were installing in catch
3 basins would not take care of metals. The cities know
4 of no of such thing.

5 A TMDL is a long-term commitment. A decision
6 to add a metal is a commitment that will have
7 implications for the future. We need to make sure that,
8 as we're adding things, we are making the long-term
9 commitment to make sure that we go after that pollutant
10 because all those inserts that somebody -- that some
11 city representative -- by the way, inserts are the most
12 commonly installed BMPs in this area -- are doing the
13 job because, if they don't remove the metals, if they
14 aren't controlling that pollutant, then what have we
15 done but to waste our time and effort on something that
16 will turn into a nonissue?

17 And by the way, I was hoping to have the
18 written comments today, but when it rains, it pours.
19 And so my New Year's Eve was spent traveling around
20 looking at BMPs.

21 I would like to acknowledge specifically
22 comments of Renee DeShazo. I may not have agreed with
23 all of them. But in particular she did mention the
24 high-flow exemption. I think that's a very important
25 one for the cities, and that's something that is

1 important.

2 She also made a very good comment about
3 translators, although I'm not necessarily in agreement
4 with it. We have seen the translators often are
5 referencing particles sizes that may not be present
6 during many of the conditions like high-flow condition
7 where a lot of sediments are being motivated or eroded
8 and moving downstream. If you're getting a lot of those
9 particulates, then that's not what the CTR is focused
10 at. It's focused at the dissolved metals.

11 So she has brought up a good point with the
12 translators, but I look at it in a slightly different
13 aspect that it's important that, if we're using it to
14 identify and start listing a metal, as an example, that
15 we make sure that we have focused in on the same
16 problem, i.e., a dissolved metal rather than perhaps a
17 high-flow period when we were measuring total metals and
18 much of it was particulates.

19 Finally, I'd like to comment on something that
20 was said by Dan Palmer with the Baykeeper. He said a
21 TMDL is just a piece of paper. I don't feel that way,
22 and I'm sure a lot of my cohorts don't feel that way.

23 I would like to let you to know I feel a TMDL
24 is a very significant commitment or -- I know it's
25 leading to an M.S. 4 permit that's going to be a

1 significant commitment and held over my head as long as
2 I work for the City of Downey. So I want to make sure
3 that the Regional Board knows what my commitment is to a
4 TMDL. Thank you.

5 VICE CHAIR SECUNDY: Thank you very much.

6 City of Burbank, Rodney Anderson.

7 MR. ANDERSON: Good morning. Again, my name
8 is Rodney Anderson from the City of Burbank, and it's a
9 pleasure to see you again as we've talked about this
10 303(d) listing a few times over the past number of
11 years.

12 I do want to applaud the use of the listing
13 policy. I think it's been much more transparent on how
14 the list is being made. So I think that's great and
15 also the efforts of staff in using that listing policy.

16 We're pleased to see some appropriate
17 delistings and listings that were made. Copper is a new
18 listing for Burbank-Western Channel, and as a city, we
19 agree it should be listed.

20 A TMDL just passed L.A. River metals TMDL. It
21 found that copper is a problem, and now it's correctly
22 listed.

23 Cadmium, on the other hand, we are happy that
24 it's delisted in this round. The data clearly
25 indicates -- unfortunately it's a little late because

1 the metals TMDL already was created, but I won't go into
2 that too much as you've heard me talk about that many
3 times.

4 In regard to other new listings, we have some
5 concerns, and it will be detailed out in a letter. Ron
6 Bench (inaudible) is used.

7 Ammonia, for one, was listed because there's a
8 TMDL effect, although there's zero of 27 samples
9 exceeded. So clearly that should not be a listing. And
10 other small comments we have in our letter, but we'll be
11 submitting those detailed comments soon.

12 Thank you.

13 VICE CHAIR SECUNDY: Thank you. We now turn
14 to the City of Los Angeles, Jim Marchese.

15 MR. MARCHESE: Good morning, Board member
16 Secundy, Mr. Wilson. My name is Jim Marchese, and I
17 represent the City of Los Angeles Department of Public
18 Works.

19 The department provides these comments with
20 the intention of assisting the State in refining the
21 Clean Water Act Section 303(d) list, water quality
22 limited segments. Written comments will be provided to
23 the State by January 17. However, we would also request
24 an extension to this submittal deadline as well.

25 First off, I wish to commend the State staff

1 in their effort to compile this proposed listing staff
2 report. Within the City of Los Angeles boundaries,
3 there are over 40 water bodies which require review of
4 over 1200 pages of information contained in this report.
5 So I can appreciate the magnitude and complexity of this
6 effort, which brings me to my first request for
7 revisions to the report and to the list.

8 In order to increase the utility of this
9 report and list, it should be written in the manner in
10 which people use it. For me that means starting with
11 one list. I suggest the 2002 list format which is
12 organized by region and then by water body, then overlay
13 the proposed 2006 list by including a column that would
14 identify all change status designators such as list,
15 delist, do not list, do not delist, and then add a no
16 change designator.

17 This table would be labeled "5A" in the report
18 and would make it easier to understand where we were and
19 where we are headed. I would also suggest carrying the
20 region water body designator format throughout the
21 report.

22 We also request a revision to this report to
23 include fact sheets for all water body listings, not
24 just those with a proposed change, so that each listing
25 is evaluated using the 2004 listing policy.

1 Also, we'd ask that included with all the fact
2 sheets the data sets be plotted on charts in order to
3 identify water quality trends and age of the data.

4 Also, we believe that we can improve the
5 accuracy of some of these listings by removing those
6 listings based on a condition, not a pollutant or
7 pollution such as in the case of Region 4 where we have
8 a listing for algae in Echo Park Lake.

9 Generally, we support the State's 2006 listing
10 effort as a much better process than past efforts and
11 offer the suggested revision as a way to increase the
12 utility and accuracy of the water source.

13 Thank you.

14 VICE CHAIR SECUNDY: Thank you.

15 County of Los Angeles, Heather Lamberson.

16 MS. LAMBERSON: Hi. Good morning. My name is
17 Heather Lamberson, and today I'm presenting comments on
18 behalf of the County Sanitation District of Los Angeles
19 County.

20 As a matter of background, the district serves
21 over 5 million people in 78 cities and unincorporated
22 areas of Los Angeles County. Altogether we own and
23 operate 11 waste water treatment plants, and several of
24 these treatment plants discharge to receiving waters in
25 the San Gabriel and San Antonio River watersheds, and we

1 have one treatment plant which discharges to the Santa
2 Monica Bay.

3 And I did have a slide to show some of these
4 water bodies, but unfortunately I can't show them to you
5 today.

6 We'd like to start off by echoing what some
7 other folks have said today in that we believe that the
8 2006 draft of the list represents a substantial group
9 than in the previous list. We've been involved in this
10 process a long time, and we really appreciate the effort
11 that the State Board staff took to put this list
12 together.

13 And, you know, based upon the noticeable
14 improvement in both the transparency and consistency in
15 listings and delistings, it appears the implementation
16 of the listing policy is working. Although the
17 districts don't agree with every aspect of the listing
18 policy, its use in developing this draft list has
19 undoubtedly improved the overall listing process.

20 And, again, we want to thank State Board staff
21 for their efforts. We'd especially like to compliment
22 the staff for their efforts in a couple areas that have
23 been controversial in the past and were also somewhat
24 controversial during the development of the listing
25 policy, and specifically these are the use of informal

1 guidelines in interpreting narrative water quality
2 standards and the application of the weight of evidence
3 approach.

4 While we may not agree with every proposed
5 listing decision, we do think that the staff carefully
6 applied the policy in a scientifically based manner and
7 have addressed inconsistent and appropriate --
8 inappropriate listings that have repeatedly been carried
9 over from past 303(d) lists.

10 And in the past, we never had any real rules
11 for how these listings were put on. So it's somewhat of
12 a relief to be able to look at these guidelines and say,
13 "Oh, okay. I understand why this was listed or why this
14 was delisted."

15 A good example of this is the proposed
16 delisting of the abnormal fish histology for several
17 segments of the San Gabriel River watershed, and we
18 support this delisting because abnormal fish histology
19 is obviously in effect, and in the supporting material
20 that was originally used to originally list this water
21 body, there was no link between a specific pollutant or
22 toxicity. So, therefore, development of the TMDL would
23 be impossible.

24 Again, we'll be providing detailed written
25 comments to the State, and we're planning to address

1 several specific listings and delistings, but today I
2 just wanted to draw your attention to two areas where we
3 think a listing will be improved.

4 The first is the incorrect application of the
5 potential municipal drinking water beneficial use, and
6 this has sort of happened in a region-wide fashion.
7 There are several listings in the Los Angeles region
8 that are based on MUN.

9 These proposed listings are not valid because
10 the listings are based on water quality objectives that
11 are associated with this potential beneficial use which,
12 in fact, don't apply to these water bodies.

13 The MUN use was conditionally designated which
14 EPA has recognized it's not legal to basically use that
15 beneficial use in establishing permanent limits or
16 basing TMDLs upon them. And we have discussed this with
17 the State Board staff, and they have indicated to us
18 that they will be taking a closer look at these
19 listings.

20 One other issues that I'd like to bring up,
21 and this is something that actually Renee DeShazo from
22 the Regional Board talked about briefly was the State
23 Board's decision not to utilize total metals data, and
24 we think this is particularly important when evaluating
25 potential delisting for metals.

1 In the California toxics rule, you may be
2 familiar that the water quality criteria for metals are
3 expressed as dissolved metals because dissolved metals
4 are what's considered to be the bio available fraction
5 and therefore is the most environmentally appropriate
6 way to regulate metals.

7 However, federal regulations require that
8 (inaudible) permit levels for metals be expressed as
9 total metals. And as Renee mentioned, there are default
10 translators in the criteria that can be applied to
11 translate between total metals and dissolved metals, and
12 there are also definitely studies that can be developed
13 to come up with a translator that's applicable in
14 site-specific basis. But the most important point is
15 that dissolved metals are always some fraction of the
16 total.

17 Now, the staff report indicates the total
18 metals are not being considered because the CTR metals
19 criteria are based on dissolved; and, therefore, they
20 can't compare the data, the total metals dissolved to
21 the dissolved criteria.

22 In response to the data solicitation from the
23 State Board, the district submitted our total metals
24 data to the State Board; and we were, in fact, required
25 to analyze total metals for our MPS permits. So that's

1 what we submitted. We believe that using total metals
2 data in a delisting context is not only technically
3 valid but can also be considered conservative.

4 If a total metals value is below the water
5 quality criteria, then obviously the dissolved fraction
6 is also going to be below the water quality criteria,
7 and in fact the dissolved metals fraction is below. So
8 we believe that this total metals data, it actually also
9 provides better temporal representation.

10 For example, we sample for total metals year
11 round in dry weather. In many water segments, most of
12 the dissolved metals data available is storm water data
13 that's collected only in wet weather. So without that
14 dry weather total metals data, the water quality
15 conditions essentially remain uncharacterized for much
16 of the year except for during warm weather.

17 That's why we believe it's perfect for the
18 State Board to consider total metals within a weight of
19 evidence context when evaluating these potential
20 delistings, and we request that the Board staff include
21 total metals data that was submitted for the San Gabriel
22 River watershed.

23 Now, something to keep in mind -- and this is
24 particularly important -- we have TMDLs for the San
25 Gabriel River that are being developed right now, and

1 this is what I mentioned.

2 VICE CHAIR SECUNDY: You need to wind up.

3 MS. LAMBERSON: Okay. Basically, the point
4 here is that incorporating total metals data can mean
5 the difference between listing and delisting water
6 bodies. We have water quality measurements for lead in
7 Coyote Creek.

8 If you include all the data, total and
9 dissolved, the water would qualify for delisting. If
10 you look at just the dissolved metals on the wet weather
11 data, the water body would be listed. So are you going
12 to develop a TMDL for it or not? So it is an important
13 issue.

14 VICE CHAIR SECUNDY: Thank you.

15 MS. LAMBERSON: And we'll discuss this further
16 in our written comments.

17 VICE CHAIR SECUNDY: Thank you very much.

18 MS. LAMBERSON: Thank you.

19 VICE CHAIR SECUNDY: The County of Orange,
20 Larry McKenney.

21 MR. MCKENNEY: Good afternoon. I'm Larry
22 McKenney from the County of Orange, and I'm speaking
23 today on behalf of the County and the Orange County
24 Flood Control District and the 34 cities jointly
25 comprising the Orange County storm water program.

1 And I'll just very briefly echo the comments
2 that have been made about the advantages of the new
3 policy. We're very grateful for having a more
4 transparent approach to the listing decisions that have
5 been made, clearer standards, et cetera.

6 And we agree with the comments made by Heal
7 the Bay and others that there are improvements that can
8 still be made. That's always the case. But it is a
9 vast improvement, we think, over what has happened
10 before.

11 And with regard to some of the imperfections
12 in the way that the standards are applied now -- and
13 there will always be some imperfections -- I have a
14 slightly different take on the precautionary ones. We
15 certainly all want the environment to be protected
16 because it protects us, but we've also heard some
17 commentary today. Gerry Greene was making the point
18 that the 303(d) list is about prioritizing effort and it
19 is a significant commitment of effort.

20 And so when the State Board staff exercises
21 its best professional judgment in the context of 303(d)
22 listing, we think it is appropriate in cases where
23 evidence is borderline for them to realize that there's
24 a reason why it's harder to get things off the list than
25 it is to put things on, and it is also relevant to

1 remember that we go through the listing process
2 frequently.

3 We're going to go through the listing process
4 many times before we get to the existing backlog of the
5 list. And so if there are doubts about putting
6 something on a list, there are reasons for erring on the
7 side of waiting until you collect more data.

8 And one example of that in our context is we
9 have a water body, English Channel, in Mission Viejo
10 that is proposed to be listed, and it meets the bare
11 minimum standard for listing because I think there's
12 four samples, or whatever the minimum is, that show
13 contamination for a toxicant.

14 However, it is the bare minimum, and all four
15 of those samples were taken at one location. And so we
16 think this is an appropriate case for the State Board
17 staff to say that those data are not representative of
18 the water body as a whole, which is one of the factors
19 that are supposed to be applied as the data to be
20 representative. So in that instance we suggest the
21 English Channel should not be listed.

22 A second water body that we have concern with
23 is the Santa Ana Delhi Channel. The principle that we
24 would urge is the water body should not be listed for
25 the impairment of beneficial uses which are not

1 designated.

2 In this case, the water body is proposed to be
3 listed for the impairment of commercial and sport
4 fishing as a beneficial use. The basin plan does not
5 designate beneficial uses for that water body, and we
6 think we should go back to the previous approach that we
7 agreed to take with the 2002 list, that any listings of
8 impairment for that Santa Ana Delhi Channel wait until
9 beneficial uses are actually designated for that water
10 body.

11 And then the final comment that I have has a
12 couple of brief subparts has to do with the use and the
13 listing decision of fish tissue data. It was very
14 interesting to hear the comments earlier about Dominguez
15 channel and the problem of having sediment data for
16 toxics and not fish tissue data.

17 We have several instances where we're
18 concerned about the use of fish tissue data by itself,
19 and there are three subconcerns.

20 First is in several cases several water
21 bodies, mainly having to do with PCBs, there's proposed
22 listings where the threshold that's used to find
23 impairment is based on an Office of Environmental Health
24 assessment -- Office of Environmental Health Hazard
25 assessment study where it developed screening values,

1 and the screening values were used as the trigger for us
2 to be not in compliance.

3 And we think that's in appropriate mainly
4 because the OEHHA study that developed those screening
5 data -- screening values specifically stated that those
6 values were not appropriate to be used for any of it,
7 that they were just to show that there might be a
8 problem that needs more investigation.

9 The second problem with fish tissue data is in
10 one water body that's proposed for listing, Peters
11 Canyon Channel, there is a reliance on a National
12 Academy of Science guideline as an evaluation criterion,
13 and we don't think that that's really appropriate
14 because that's an old study.

15 There have been more recent studies. There
16 have been studies that rely on data that was collected,
17 for example, since the Nixon administration. So more
18 recent data is available, and so we don't think that
19 that's an appropriate standard to use in Peters Canyon
20 Channel.

21 And then finally for fish tissue data -- and
22 this is what really relates back to this issue of the
23 Dominguez Channel where they had sediment data. We had
24 fish tissue data and no sediment data. I think we have
25 to realize fish move. Because there's contamination in

1 the fish tissue, if you don't have correlating site
2 specific data of water column or sediment contamination,
3 you don't really know whether the fish picked that
4 contaminant up in that water body or not.

5 So where we have several examples of fish
6 tissue data that's not corroborated by anything else, we
7 don't think it's appropriate to list on that single line
8 of evidence. We think it's a very valid use of fish
9 tissue data to support the multiple line of evidence
10 approach. We don't think it should be the sole line of
11 evidence.

12 I know I've said that I'm speaking on behalf
13 of our storm water program. I know I have other cities
14 that are present here, and I don't know whether they
15 plan to speak or not. But we did collaborate on
16 preparing these comments.

17 VICE CHAIR SECUNDY: Thank you.

18 Big Bear Lake Metropolitan Water District, Tim
19 Moore.

20 MR. MOORE: Good afternoon. My name is Tim
21 Moore. I am the TMDL coordinator for Big Bear Lake.
22 I'd like to start off by saying how very much we
23 appreciate the regional and State Board's support with
24 Prop 13 money to help us meet previous TMDL obligations,
25 and we're pleased to say we have seen significant

1 improvements in water quality in Big Bear Lake as a
2 direct result of that financial support.

3 The stakeholders of Big Bear Lake are very
4 strong supporters of the listing process and the TMDL
5 process because we can see the direct benefits in our
6 community.

7 With that in mind, I'd like to talk to you
8 briefly about the proposed listing for PCBs on Big Bear
9 Lake. I'd like to echo what Larry just told you in that
10 the proposed new threshold for what constitutes an
11 exceedance of the narrative objective has changed from
12 what was used in 2002 or at least has been added.

13 In 2002 many of the regional boards relied on
14 the FDA action memo which was 2,000 parts per billion in
15 the fish flesh. The new proposed level of the screening
16 value in this instance is 20 parts per billion.

17 As Larry pointed out to you, that is not an
18 official OEHHA position but rather merely a quality
19 assurance threshold that was used in a single study by a
20 couple of OEHHA scientists.

21 I've placed a handout on the table in front of
22 you which shows that the 20 parts per billion value
23 comes from the Broadberg and Pollock study of 1999.
24 They are the OEHHA scientists.

25 And within that study itself on Page 4, it

1 specifically says that the screening values are not
2 intended as levels at which consumption advisories
3 should be issued but are as useful as a guide to
4 identify fish species and chemicals from a data set such
5 as this one for more intensive sampling.

6 So to use this particular screening value as
7 though it were a direct translation of the narrative
8 objective is inappropriate. The narrative objective in
9 the San Ana regional basin plan says that PCBs shall not
10 be present at levels which are allowed to bioaccumulate
11 in a concentration which would be harmful to human
12 health.

13 That precisely is what the authors of the
14 studies say they are not doing. They are not making a
15 public health advisory statement. In fact, Region 8
16 reviewed this same data with OEHHA, and they came to the
17 conclusion that the data was inadequate to support a
18 public health advisory in this instance.

19 So by listing Big Bear Lake -- we know OEHHA
20 says it ought not to be -- will create enormous public
21 confusion as to whether the fish is safe or not.

22 Here is what we would recommend. I guess
23 here's the primary problem. If you look at the actual
24 language of the proposed listing -- and I made a copy of
25 that in the handout as well -- it says that based on the

1 available data, the applicable water quality standards
2 are exceeded.

3 Well, there is no fish flesh objective for
4 PCBs in Big Bear Lake or in the Santa Ana regional basin
5 plan. So to make a categorical statement that you're
6 exceeding an objective that doesn't exist is
7 inappropriate.

8 What you have is a narrative objective I cited
9 to you a moment ago, and so then to apply that exceeding
10 the safety value or the screening value is tantamount to
11 violating the narrative objective in that you're saying
12 they are exceeding is an inappropriate translation, and
13 more importantly it's inconsistent with the guidance
14 which was published that said, when you are using these
15 sorts of values or these translators of narrative
16 objectives, you're not establishing water quality
17 objectives.

18 Our greatest concern by far is that this
19 number, this screening value, will become automatically
20 the target for the TMDLs because of the language in the
21 listing that says exceeding it means you're violating
22 the basin plan.

23 What we recommend is this -- because we're
24 certainly not in favor of PCBs in Big Bear Lake. We
25 recommend that the phrase "are exceeded" be changed to

1 "may be exceeded" so that the Regional Board has the
2 discretion when they implement the TMDL to choose the
3 most appropriate target. It is not obligated to meet
4 this specific screening value in the future.

5 In addition -- and this is very important --
6 when you're looking at fish consumption, there's a
7 built-in math as to just how much fish is being
8 consumed. When you look at, say, EPA screening values,
9 they provide the math for you so you could make a
10 judgment as to whether that's what's really happening or
11 not.

12 The OEHHA screening value math is not present
13 in your administrative record. Thanks to Mr. Wilson and
14 his staff, we had an opportunity to go over all 27,000
15 pages of it. This particular study is present, but the
16 quality assurance project plan which describes the math
17 they use has only the title page. The actual math isn't
18 in the administrative record.

19 So we have no way to know what assumptions
20 they made about consumption levels or the types of fish
21 that are being consumed or the number of years they're
22 being consumed, in essence, how did they arrive at this
23 20 parts per billion number.

24 That's important. The whole reason that the
25 State Board adopted 20 parts per billion in the listing

1 guidance was to protect subsistence fishing.

2 Well, subsistence fishing in Big Bear Lake is
3 rather different from most of the state. The lake is
4 frozen over for two or three months out of the year. So
5 if someone is depending on fishing, being at Big Bear
6 Lake in the winter, they're likely to go very, very
7 hungry.

8 The problem then is that assumptions about
9 what OEHHA assumed in their calculations may or may not
10 be valid in Big Bear Lake, but we have no way to tell
11 from the administrative record available to us.
12 Therefore, we recommend that language be changed.

13 In addition, we would ask that the State Board
14 explicitly state to the regional boards that they are
15 not obligated to use these screening values as automatic
16 targets, that they are, in fact, just for listing and
17 delisting. They are not intended to be the presumptive
18 or automatic targets in a TMDL adoption process.

19 Otherwise, I think they're likely to be mistaken for
20 that given how this particular listing both in Big Bear
21 Lake and similar listings appear -- or phrasings appear
22 like this for Lake Elsinore as well -- that will cause
23 us great concern in the future.

24 If this listing goes forward, not only will it
25 confuse the public, we're very concerned that it will

1 divert very scarce resources from previous listings and
2 previous TMDLs such as the nutrient and algae reduction
3 efforts at Big Bear Lake to chase after a phantom
4 problem in Big Bear Lake.

5 So in a community with fewer than 10,000
6 full-time residents, median household income well below
7 the state-wide average. It's officially designated as a
8 poor community by the State -- losing a couple hundred
9 thousand dollars to monitor for PCBs in fish flesh that
10 folks may or may not be eating is a poor use of public
11 resources if it's being pulled away from genuine
12 problems that have been acknowledged to exist and which
13 we've been working on now for five or six years.

14 So we urge extreme caution in the use of this
15 screening value for this purpose, and we would like you
16 to look at the wording of the listing that more properly
17 reflects its status as a narrative translator.

18 VICE CHAIR SECUNDY: Thank you. I think we
19 have a response from staff on this one.

20 MR. WILSON: I'd like to clarify a number of
21 factual points. The listing process is separate and
22 distinct from developing a health advisory. It is not
23 equivalent. It's a completely different process. It's
24 done by completely different agencies.

25 The standard of the water quality objective

1 that was used in this case was a narrative objective.
2 And in this example, we use this guideline as a way to
3 help us show everyone our thinking in developing the
4 stat sheet in showing that we believe that narrative
5 standard is not met.

6 VICE CHAIR SECUNDY: But we heard you loud and
7 clear. Thank you.

8 Folks, hang in there. We've heard from 21
9 speakers. We have three to go. So just about there.

10 Andy Henderson, B.I.A.

11 MR. HENDERSON: Thank you. I'm Andy
12 Henderson. I'm vice president and general counsel for
13 Building Industry Association of Southern California and
14 also the general counsel of the BIA Foundation that
15 sometimes participates in litigation about these
16 matters.

17 I want to first echo what everyone else has
18 said and compliment the State Board and the staff for
19 undertaking this process. I think that the regional
20 boards certainly have very able staff. They're working
21 as hard as they can in running full speed.

22 But the State Board is in position to make a
23 wide range of disparity in the quality of the work
24 that's been done in the past, not so much what's being
25 done now, but in the past the work that's been done by

1 the various regional boards has got to be spotty at best
2 from your point of view. And I think the ability to
3 bring to bear the State staff and that perspective to
4 this question of delisting and relisting can only result
5 in great improvement.

6 And I would urge the staff and the Board not
7 to be worried about perfection here because it's clear
8 that what's being done is a vast improvement, and we
9 don't want to let perfection become the enemy of
10 betterment. So try to carry on. I think you're doing a
11 great job with the process.

12 I would also urge that this type of process
13 needs to be explored into other areas of water quality
14 regulation. And in particular, sort of the big elephant
15 in the room here is the basin plans themselves which are
16 standards, objectives and beneficial uses.

17 It's been referred to a number of times today.
18 And the boards -- the regional boards are trying to
19 make, I think, new efforts to better address basin
20 plans. And I think things like high-flow suspension is
21 a very small first step. And L.A. Regional Board is
22 working on a wet weather task force that I also think is
23 a good step forward.

24 But some of the things that were discussed
25 today really are problems of objective standards and

1 uses. For example, there was someone who discussed
2 bacteria on beaches after -- in Santa Monica.

3 Well, if you go back and look at the sort of
4 state of nature before there was Columbian man coming
5 into the Los Angeles area, it's probably a fact that the
6 natural state of the beaches after a very large rain
7 would be there would be tons of bacteria on those
8 beaches. And yet, that's not a question that has really
9 been asked, and it's a question that needs to be asked
10 in really revisiting the basin plans.

11 The overarching goal of the Clean Water Act is
12 to restore and maintain the physical, chemical and
13 biological properties of the water of the United States.
14 And I want to put particular emphasis on the question of
15 restoring those qualities because that verb "restoring"
16 suggests that we should be looking back at a
17 nonanthrogenic state of things.

18 If you're going to restore something, you're
19 going to restore it to some earlier state, and I submit
20 that the earlier state you need to restore it to is the
21 natural state, and the Natural Resources Defense Council
22 I would think would say that as well.

23 So we need, when we're looking at beneficial
24 uses and objectives and standards to ask the question,
25 what is the natural state of affairs? What if there was

1 no Columbian man here? How much sediment would there be
2 in our water? How much algae would there be in our
3 water? You could go hiking up in the Malibu hills and
4 San Gabriel mountains and see algae, and there's a ton
5 of sediment coming out, especially in the San Andreas
6 mountains, in a heavy storm. It's just the natural
7 impact around here.

8 So we need, when we're talking about
9 beneficial uses and objectives and standards, to ask
10 that question first and foremost. And I applaud the
11 L.A. Regional Board for, I think, starting to ask that
12 question. But we really need to focus on that.

13 There's just a couple of other things that
14 were mentioned today. The dissolved oxygens. Another
15 example where, again, we have to ask how much of that is
16 natural? And if it's natural, then we need to take that
17 into objective standards and uses.

18 And I think that the place to do that is
19 obviously in the tri-annual review. You can tell from
20 the process you're undertaking now which respect to
21 listings of comparative water bodies that this has got
22 to be an iterative process where the science is
23 constantly being revisited and it's being improved upon.

24 And the tri-annual review process of the basin
25 plans is that -- it's baked into the statute as to when

1 this is supposed to occur, and yet we have found that
2 the tri-annual reviews that are undertaken by the
3 regional boards are not serious reviews, and that's why
4 I would urge the Board, the State Board and its staff,
5 to look ahead and to think how it can weigh in with the
6 same sort of rigor that it has in this instance to the
7 whole question of objectives, uses and standards in
8 basins.

9 Thank you.

10 VICE CHAIR SECUNDY: Thank you.

11 Clayton Miller, Construction Industry
12 Coalition.

13 MR. MILLER: Yes. Good afternoon. My name is
14 Clayton Miller, and I'm here on behalf of the
15 Construction Industry Coalition on Water Quality. I
16 would like to take a moment to thank the State Board for
17 providing this opportunity this morning for public
18 comment on the proposed advised Section 303(d) list.

19 First and foremost, I want to recognize that
20 the listing policy being used for this update offers
21 enhanced objectivity, balance and improved sciences that
22 welcome certainly the process.

23 As such, we accept reliance on the application
24 of sound science and objective data would consider the
25 upcoming listing and delisting decisions. As has been

1 often expressed before, to do otherwise would lead to
2 findings that result in unreasonable and infeasible
3 water quality standards. Objectives in uses would place
4 an extraordinary strain on the limited economic
5 resources available to the regulated community to comply
6 with the established water quality standards.

7 One example where the application of sound
8 science can offer insight into the determination, for
9 example, beneficial use designations are with potential
10 uses that are often predicated on uses which are highly
11 improbable and do not necessarily take into account real
12 world conditions such as the variability and intensities
13 of all storms.

14 We are encouraged, however, by the L.A.
15 Regional Board's decision for the formation of the wet
16 weather task force that represents additional efforts to
17 examine this type of issue. It is the goal of everyone
18 here today, I believe, to realize the attainment of
19 water quality standards. CICWQ stands ready to assist
20 in this process to achieve this goal.

21 Thank you for your time.

22 VICE CHAIR SECUNDY: Thank you.

23 I have one last card from Susan Paulson, if
24 necessary. Yes.

25 MS. PAULSON: Thank you. My name is Susan

1 Paulson. I'm here on behalf of Newhall Land and Farming
2 Company.

3 First just some background. Newhall takes its
4 responsibility to maintain and protect water quality in
5 the Los Angeles region very seriously and works hard to
6 meet its obligations to be open and transparent IN
7 collecting and sharing information and data.

8 To that end, Newhall has collected a large
9 amount of data for certain regions of the upper Santa
10 Clara River and has provided those data to the Regional
11 Board. We would like to request that those data be
12 included in the State board's considerations for this
13 listing policy.

14 Our comments are going to be general and are
15 mainly applicable to the proposed existing listings in
16 the upper regions of the Santa Clara River. We will
17 provide detailed written comments that would support the
18 extension, the deadline extension, and will provide to
19 the State Board the data that we're referencing in any
20 form that you would find most useful.

21 The main -- our main comments are as follows:
22 First, the good news. The new data really looked pretty
23 good. There are a lot of new data points collected over
24 the last 18 months or so. For example, there have been
25 approximately 80 samples collected from -- to the Santa

1 Clara River locations at regular intervals for nitrate
2 and nitrite. I believe all of those samples are below
3 the water quality objectives for that region of the
4 river.

5 Again, the data has been provided to the
6 Regional Board. We'll provide them to the State Board
7 also in this context.

8 The data for nitrate and nitrite as well as
9 data for ammonia and diazinon which support either, for
10 ammonia and diazinon, not listing those constituents in
11 the first place or for nitrate plus nitrite delisting.
12 They do meet the statistical requirements in the listing
13 policy.

14 We believe that it's important to consider the
15 newer data, especially for constituents like diazinon
16 that were phased out some time ago. So the constituent
17 concentrations may be declining over time, and indeed
18 that's what these newer data appear to show.

19 We do have a concern with the proposed listing
20 for aluminum. To echo the comments of LACSD, that
21 listing is based upon what we would call a P-star MUN, a
22 potential or a conditional potential use designation
23 within the L.A. basin plan.

24 The designation was suspended in 2001. I
25 believe EPA acknowledged that suspension as well, and

1 therefore that designation is not to be used as a basis
2 for regulatory decision making.

3 A second concern of that listing is based upon
4 a secondary MCL. EPA describes secondary MCLs as
5 nonenforceable guidelines that are intended to assist
6 public water systems in managing their drinking water
7 for aesthetic considerations such as taste, color and
8 odor. Contaminants are not considered to present a risk
9 to human health at a secondary MCL. That's the end of
10 the quote.

11 Secondary MCLs are intended to be applied to
12 drinking water in the distribution system or at the
13 point of delivery, not in the receiving water itself or
14 in natural water. And, therefore, we believe that
15 that's an inappropriate basis for making a listing
16 decision.

17 We would note that both of those arguments,
18 both the conditional P-star MUN designation as a basis
19 for listing and the use of secondary MCLs apply to other
20 water body constituent combinations within the region.

21 Finally, we have just sort of a general
22 concern. There are a large amount of data that are
23 available in these regions for PCBs. All of the results
24 that Newhall collected are nondetect. The concern or
25 the problem with that is that a lot of the detection

1 limits are actually above the CTR water quality
2 criterion, and so those data aren't considered.

3 It is a very large body of data, and it
4 actually isn't that different from the CTR criterion.
5 The concern is that even a single sample or two that are
6 found in a different data set, for example, that would
7 be above the criterion are used as a basis for a listing
8 decision.

9 And the concern is that, you know, we're
10 concerned that a listing for PCBs is premature and that
11 it would be a more appropriate action at this point to
12 collect additional data with lower detection limits so
13 that we can assess whether or not that impairment is
14 real and is represented spatially and temporally of
15 what's going on within that water body.

16 Finally, several of the proposed listings
17 are -- there's a note in the listing or in the staff
18 report saying it has a remedial program in place, and we
19 believe that these proposed listings should be placed on
20 the part of the list of the water quality segments that
21 are being addressed. Chloride and nitrate would be
22 examples of this.

23 And also we believe that that action is
24 appropriate for those constituents like chloride and
25 nitrate where a single source is very most likely the

1 predominant cause of that (inaudible) exceedances that
2 are observed to occur and is being addressed via
3 separate regulatory programs.

4 Finally, just a couple of closing points. We,
5 to echo other comments, really appreciate the clarity
6 and the objectivity that's brought about by the new
7 state listing policy. We may not agree with the policy
8 in its entirety or with the decisions, but we really
9 appreciate the improvements in the process and the hard
10 work of the State Board and the State Board staff in
11 taking these issues seriously.

12 We would support the extension. We would like
13 to support the State Board in including all of the
14 available and relevant data and in trying to get this
15 right.

16 I think that's it. As I mentioned, we will be
17 providing formal written comments in the proposed
18 changes to the 303(d) list and appreciate the
19 opportunity to be heard.

20 Thank you.

21 VICE CHAIR SECUNDY: Thank you.

22 Is there anyone that filled out a blue card
23 that has not had an opportunity to speak? Is there
24 anyone who has an overwhelming urge to speak?

25 All right. Well, then, I think that ends our

1 formal process. I will be meeting with staff. We will
2 certainly take under consideration whether or not we
3 should extend the time limit in terms of comments will
4 be the first thing.

5 For those of you who you have not had an
6 opportunity to address before, let me say what I have
7 said at other hearings, which is we take these hearings
8 very seriously. We do not come here as Board members
9 with our minds made up. It is for us to indeed soak in
10 the information that you are giving us so that we do
11 have all of the evidence provided in order to make an
12 informed decision.

13 So what you say today is extremely valuable to
14 us, and I very much appreciate your taking the time and
15 effort to come here and give us the benefit of your
16 thoughts.

17 So from I can hear the process has indeed
18 improved rather substantially. I would like to
19 congratulate the staff for doing a bang-up job on that.
20 No question, and I know that there's always room for
21 improvement for all of us.

22 Thank you very much. And I'm going to ask the
23 court reporter to stop recording for just a second.

24 (Whereupon, the proceedings concluded at
25 12:42 P.M.)

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1 REPORTER'S CERTIFICATE

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3 I, DEBORAH MORIN, CSR No. 11558, Certified
4 Shorthand Reporter, certify:

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth;

7 That the testimony of the speakers and all
8 statements made at the time of the proceedings were
9 recorded stenographically by me and were thereafter
10 transcribed.

11 That the foregoing is a true and correct
12 transcript of my shorthand notes so taken.

13 I further certify that I am not a relative or
14 employee of any attorney of the parties, nor financially
15 interested in the action or the outcome thereof.

16

17 IN WITNESS WHEREOF, I have subscribed my name
18 this 18th day of January, 2005.

19

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DEBORAH MORIN, CSR No. 11558

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