

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 )  
 )  
\_\_\_\_\_ )

JOE SERNA, JR., CAL/EPA HEADQUARTERS BUILDING  
1001 I STREET  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 6, 2005

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JAMES F. PETERS, CSR, RPR  
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Tam Doduc, Chairperson

STAFF

Mr. Steven H. Blum, Staff Counsel

Ms. Dorena Goding, Environmental Scientist

Mr. Robert Musial, Water Resources Control Engineer

Mr. Craig J. Wilson, Environmental Specialists

Mr. Randy Yates, Environmental Scientist

ALSO PRESENT

Ms. Brenda Adelman, Russian River Watershed Protection  
Committee

Mr. Robert Carey, W.M. Beaty & Associates

Ms. Sejal Choksi, San Francisco Baykeeper

Mr. Jim Curland, Defenders of Wildlife

Ms. Cynthia Elkins, Center for Biological Diversity

Assemblymember Noreen Evans

Mr. Arthur Godwin, Merced Irrigation District

Mr. Bruce Gwynne, North Coast Regional Water Quality  
Control Board

Mr. John Herrick, South Delta Water Agency

Mr. Craig Johns, City of Santa Rosa

Mr. Joe Karkoski, Central Valley Regional Water Quality  
Control Board

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Peter Kozelka, United States Environmental Protection Agency

Ms. Debra Liebersbach, Turlock Irrigation District

Mr. Alan Levine, Coast Action Group

Mr. Lee Mao, Bureau of Reclamation

Ms. Carrie McNeil, Deltakeeper

Dr. Denver Nelson

Mr. Tim O'Laughlin, San Joaquin River Group Authority

Dr. Cindy Paulson, Brown & Caldwell, Turlock Irrigation District

Mr. Bob Rawson, International Wastewater Solutions Corporation

Mr. Peter Ribar, Campbell Timberland Management

Mr. Mike Sandler, Community Clean Water Institute

Mr. Dan Schurman, Laguna de Santa Rosa Foundation

Ms. Linda Sheehan, California Coastkeeper Alliance

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## 1 PROCEEDINGS

2 CHAIRPERSON DODUC: Good morning, everyone.  
3 We're going to get started. This is the time and place  
4 for our public workshop by the State Water Resources  
5 Control Board, regarding the proposed 2006 update of the  
6 federal Clean Water Act Section 303(d) list. This is the  
7 first day of 2 days of workshops on this update.

8 The second workshop will be held on Thursday,  
9 January 5th in Pasadena. The purpose of this workshop is  
10 to solicit comments on the draft staff report entitled,  
11 Revisions of the Clean Water Act Section 303(d) of the  
12 Water Quality Limited Segments, dated September 2005.

13 I am Tam Doduc Chair of the State Water Board. I  
14 would like to introduce staff primarily responsible for  
15 the 303(d) list review and who will be assisting us in  
16 this workshop. Craig J. Wilson, Fred LaCaro -- is Fred  
17 here?

18 WATER RESOURCES CONTROL ENGINEER MUSIAL: He's  
19 still downstairs.

20 CHAIRPERSON DODUC: Okay. Dorena Goding, Robert  
21 Musial, Randy Yates. These are staff from the Division of  
22 Water Quality. And from the Office of Chief Counsel  
23 Steven Blum.

24 The order of procedure will be a brief staff  
25 presentation and then comments from interested parties.

1 Please be sure to indicate on the card -- blue cards are  
2 available in the back -- which regions you wish to  
3 address. If you have not yet filled out a card and would  
4 like to speak, please fill one out and bring it up to the  
5 staff.

6           The workshop will not be conducted in accordance  
7 with technical rules of evidence. We will accept comments  
8 that are reasonably related to the 303(d) list review.  
9 Written and oral comments are all part of our record. If  
10 needed, staff and I may ask questions to clarify the  
11 comments presented.

12           To expedite today's proceedings we may limit the  
13 length of oral presentation. Judging from the number of  
14 cards I have to date, I think we'll go ahead and not  
15 impose a standard for now. But it will be very helpful if  
16 you could summarize any written comments you've submitted.  
17 And if a speaker before you has already addressed your  
18 concerns, please just state your agreement and avoid  
19 repeating the comment.

20           Today's workshop will focus on comments  
21 pertaining to the North Coast Region, San Francisco Bay  
22 Region, Central Coast Region, Central Valley Region, and  
23 Lahontan Region. Comments will not be limited to these  
24 regions, however, so feel free to discussion any aspect of  
25 the proposed list.

1           The administrative record for this workshop will  
2 remain open until January 17th, 2006. You may submit  
3 written comments any time during this period. Following  
4 the close of the record, the State Water Board will review  
5 all comments. Written responses will be included in the  
6 final staff report. Any substantive changes made as a  
7 result of comments received will be made available to  
8 interested parties before this Board considers the final  
9 list for adoption.

10           With that, I will ask staff Robert Musial to make  
11 the presentation.

12           WATER RESOURCES CONTROL ENGINEER MUSIAL: Good  
13 morning and thank you, Chair Doduc.

14           My name is Robert Musial and I am a water  
15 resource control engineer in the Water Quality Assessment  
16 Unit. I would like to provide you with a brief overview  
17 of the requirements of Section 303(d) of the Clean Water  
18 Act and the developments since the last listing and a  
19 summary of the methodology we used to develop the updated  
20 list.

21           Now, the Clean Water Act Section 303(d) requires  
22 States to identify waters that do not meet applicable  
23 water quality standards after the application of  
24 technology-based controls. This list is commonly referred  
25 to as a 303(d) list or the list. The list must identify

1 each water body not meeting standards and specify the  
2 pollutant that exceeds the standards.

3           The list was last revised in 2003. A schedule  
4 prioritizing total maximum daily load development must  
5 accompany the list. A significant development since the  
6 last list revision of 2003 is the Water Board's adoption  
7 of apology -- excuse me, of a policy which, for one thing,  
8 establishes listing requirements.

9           On September 30th, 2004, the Water Board adopted  
10 the water quality control policy for developing  
11 California's Clean Water Act Section 303(d) list. The  
12 listing policy identifies the process by which the Water  
13 Boards will comply with the listing requirements of Clean  
14 Water Act Section 303(d).

15           The policy became effective in December 2004.  
16 The objective of the policy is to establish a standardized  
17 approach for developing California's list with the overall  
18 goal of achieving water quality standards and maintaining  
19 beneficial uses in all of California's surface waters.

20           The policy outlines a weight-of-evidence approach  
21 that provides the decision rules for different kinds of  
22 data, an approach for analyzing data statistically and  
23 requirements for data quality, data quantity and  
24 administration of the listing process.

25           The policy requires that all waters that do not

1 meet water quality standards be placed on the list. There  
2 are 2 categories -- excuse me, two categ -- tongue tied.  
3 There are 2 categories of the list and they are number 1,  
4 waters still requiring a TMDL; and 2, waters where the  
5 water quality limited segment is being addressed.

6 In order to develop the proposed list, the Water  
7 Board solicited, assembled and considered all readily  
8 available data and information. A public solicitation of  
9 data and information began in April 2004 and concluded in  
10 June of 2004.

11 All data and information that became readily  
12 available to Water Board staff -- in this case staff --  
13 were made part of the administrative record and considered  
14 in the development of the proposed list. The data  
15 received generally covered the period of 2001 to early  
16 2004. Some data were submitted that addressed pre-2002  
17 listings.

18 Data through March 2005 from the surface water  
19 ambient monitoring program were included in the record. A  
20 staff report was developed which, among other things,  
21 contains the additions, deletions and changes to the 2002  
22 list. Staff reassessed the priorities established in the  
23 2002 list. Based on budgeted resources currently  
24 available and the factors presented in Section 5 of the  
25 listing policy, staff recommended the schedules for

1 completion of TMDLs in Table 9 of the staff report.

2 All other waters not presented in Table 9 are  
3 recommended for completion by 2019. The 2002 list has  
4 1,883 water-body pollutant combinations. The  
5 recommendations presented in Table 5 of volume 1 of the  
6 staff report would increase by 287 the water-body  
7 pollutant combinations.

8 I will conclude by saying that we are looking  
9 forward to the comments we will be receiving today. And I  
10 would like to add that the comment period for the proposed  
11 list has been extended to January 17th in order to allow  
12 more time for the public review -- for the public to  
13 review the list and associated documents.

14 If you have any questions at this time or at this  
15 point, Mr. Craig Wilson and I would be happy to address  
16 them.

17 Thank you very much.

18 CHAIRPERSON DODUC: Thank you.

19 The numbers of cards are increasing. With that,  
20 we'll begin with comments on Region 1, the North Coast  
21 Regional Water Board starting with Bruce from the North  
22 Coast Regional Water Board. Could you please identify  
23 yourself for the court reporter.

24 MR. GWYNNE: Yes. Good morning, Chair Doduc.  
25 I'm Bruce Gwynne from the North Coast Regional Water

1 Board. And I am representing the staff. I imagine you're  
2 in receipt of the letter from our executive officer to the  
3 State Board. We have no further information to submit  
4 today. I've been sent here to make sure you have an  
5 informed person who's familiar with the watersheds of the  
6 North Coast Region available should you need any  
7 clarification either on our memo or on the issues that  
8 come up before you today.

9 I've worked for the North Coast Region since  
10 1991. I have helped the State since that time in their  
11 compliance with Sections 305(b), 303(d) and 303(e) of the  
12 Clean Water Act. And in addition between 1991 and 1998, I  
13 administered all of the region-wide monitoring programs  
14 for the north coast region.

15 Thank you.

16 CHAIRPERSON DODUC: Thank you.

17 Linda Sheehan.

18 Ms. Sheehan, you had identified you wanted to  
19 address all regions. Did you want to do it individually  
20 or all at once?

21 MS. SHEEHAN: No, I can wait and do it later,  
22 towards the end.

23 CHAIRPERSON DODUC: Okay.

24 Mr. Craig Johns.

25 MR. JOHNS: I guess that doesn't go up any

1 further now.

2           Good morning, Madam Chair. My name is Craig  
3 Johns. I'm here on behalf of the City of Santa Rosa  
4 today. First, we'd like to thank staff and particularly  
5 Craig Wilson for their tireless efforts on what is a very  
6 comprehensive and exhaustive review of the existing list,  
7 and no doubt substantial data that went into their  
8 decisions on both sides of listing and delisting  
9 recommendations.

10           Santa Rosa has 3 points of disagreement with the  
11 staff's recommendations, one request for clarification and  
12 one major point of agreement with the recommendations that  
13 your staff had provided.

14           The first one has to do with Santa Rosa Creek and  
15 the specific conductance listing. The listing for Santa  
16 Rosa Creek for connectivity was based on exceedance of the  
17 basin plan. However, the basin plan connectivity  
18 objectives for the Russian River Hydrological unit are for  
19 a upper and lower main stem Russian River.

20           The objective applied to Santa Rosa Creek for the  
21 upper Russian River in the footnote to the basin plan says  
22 that the Russian River main stem river upstream of its  
23 confluence with the Laguna de Santa Rosa as far as its  
24 designation. Santa Rosa Creek is not tributary to the  
25 Russian River upstream to which this objective applies,

1 and therefore this objective cannot and should not be used  
2 for a basis of including Santa Rosa Creek on the 303(d)  
3 list for connectivity.

4           The second point of disagreement is for the  
5 Russian River Guerneville hydrological sub-area pH  
6 listing. The fact sheet states that the focus of the  
7 listing should be on Pocket Canyon Creek, because that's  
8 where the sampling was limited, because Pocket Creek is a  
9 tributary to the Lower Russian River within the greater  
10 Guerneville HSA.

11           However, the listing that's been proposed by  
12 staff is for the entire Guerneville HSA. The State Board  
13 staff recommendations and fact sheet provide no evidence  
14 that other waterbodies in the Guerneville HSA, including  
15 the Russian River, are pH impaired. Therefore, if the  
16 State Board wishes to list, they should limit the listing  
17 to Pocket Canyon Creek only for pH, and not the entire  
18 Guerneville HSA.

19           Lastly, on the Laguna de Santa Rosa mercury  
20 listing, Santa Rosa disagrees with the staff  
21 recommendation here because the listing is based on  
22 screening values that were developed by Brodberg and  
23 Pollock ultimately used by OEHHA, which we believe are  
24 inappropriate for this particular listing.

25           In their report, Brodberg and Pollock state

1 specifically that the screening value approach is  
2 recommended simply to identify chemicals of contaminants  
3 in fish at concentrations which may require additional  
4 review and study. However, the screening values are not  
5 intended to be levels at which consumption advisories  
6 should be issued.

7           Furthermore, Brodberg & Pollock note that the  
8 U.S. EPA screening value for mercury is actually .6 ppm,  
9 which is double the screening value used by staff in this  
10 particular recommendation of .3.

11           When you look at the data for this particular  
12 water segment, only one value in the Laguna exceeds the  
13 U.S. EPA screening criteria, and this one exceedance does  
14 not meet the listing policy minimum requirements.  
15 Therefore, it should not be listed at this time for  
16 mercury exceedance.

17           Our request for clarification goes to how some of  
18 the specific waterbodies and segments and hydrological  
19 units are referred to. Only in Region 1 the State Board  
20 staff recommendations and fact sheets state the  
21 hydrological area, hydrological unit and hydrological  
22 sub-area as appropriate for individual waterbodies.

23           For example, the mercury listing that I just  
24 mentioned for the Laguna has Russian River hydrological  
25 unit, middle Russian River hydrological area Laguna de

1 Santa Rosa under the water segment in Table 6. For all  
2 other regions, based on our review, only the specific  
3 waterbody is listed. This leads to 2 possible  
4 interpretations for Region 1 recommendations, which should  
5 be clarified to avoid ambiguity in the future.

6 One is that only the specific waterbody is  
7 recommended for listing, or 2 the waterbody and its HA and  
8 HU are recommended for listing. We would ask the staff  
9 clarify exactly what the intent is.

10 Finally, our major point of agreement is the  
11 staff's recommendation to delist the Laguna de Santa Rosa  
12 for nitrogen and phosphorus. As a point of just minor  
13 background, the State Board recommended at the last  
14 listing to actually delist the Santa -- Laguna for  
15 nitrogen and phosphorus. This decision was ultimately  
16 overturned by U.S. EPA for reasons which the City does not  
17 agree with, and which ultimately your staff has gone back  
18 and reviewed and ultimately decided that their original  
19 recommendation in the decision by this Board a couple of  
20 years ago was correct and has decided to recommend to you  
21 to delist again the Santa -- Laguna for nitrogen and  
22 phosphorus.

23 We do believe that the fact sheets should reflect  
24 more of the basis for staff's recommendation and decisions  
25 so that when this issue is finally submitted to EPA for

1 their consideration they'll be more in the record. We  
2 will be submitting further information on the technical --  
3 specific technical issues which we think would help  
4 bolster the record.

5 And with that, I thank you very much.

6 CHAIRPERSON DODUC: Thank you, Mr. Johns.

7 Any clarifying questions?

8 Mr. Dan Schurman.

9 MR. SCHURMAN: Good morning. My name is Dan  
10 Schurman. I'm the executive director of the Laguna de  
11 Santa Rosa Foundation. I'm joined here today by Dr. Anna  
12 Sears our Research Director. Laguna Foundation is a  
13 nonprofit organization founded in 1989 that organizes and  
14 manages restoration planning, research and implementation  
15 projects in and around the Laguna de Santa Rosa.

16 Most recently the Foundation has been leading  
17 local efforts to control invasive Ludwigia in the Laguna.  
18 This weed has spread very quickly through the Laguna's  
19 shallow waterways creating broad concerns for public  
20 health, environmental integrity and flood control. Dense  
21 growth of Ludwigia provide protective habitat for mosquito  
22 vectors of West Nile Virus filling in wetlands and  
23 displacing native vegetation.

24 We are currently coordinating a massive publicly  
25 funded program to address the worst impacts of this

1 infestation. In July and August of this year, more than  
2 100 acres of channel and floodplain were treated with  
3 herbicides and 4,500 tons of plant material were removed  
4 from the system.

5 Ludwigia research and control has already cost  
6 more than \$900,000 and has been the subject of more than  
7 75 news stories in the local press. Considering the  
8 magnitude of Ludwigia's impacts, control costs and public  
9 concerns, Ludwigia is arguably the worst environmental  
10 nuisance in Sonoma county. Biologists working on this  
11 system consider it highly unlikely that Ludwigia could  
12 grow at the observed rate and magnitude without the  
13 bio-stimulatory effects of excessive nitrogen and  
14 phosphorus levels found in the Laguna.

15 The current regulatory standard for impairment is  
16 based on the presence of a bio-stimulatory effect leading  
17 to an environmental nuisance. We believe that the current  
18 Ludwigia conditions clearly violate this standard.

19 For this reason we request that the State Water  
20 Resources Control Board maintain the current 303(d)  
21 listing for nitrogen and phosphorus impairment in the  
22 Laguna and allow the Laguna's nutrient TMDL to go forward.  
23 We believe that removing the listing will undermine  
24 long-term Ludwigia control efforts and lead to further  
25 environmental degradation, health risks and public

1 expense.

2           There's a long history of contention and finger  
3 pointing over water quality impairments in the Laguna and  
4 wide recognition that excess nutrients pose a great  
5 challenge for Laguna restoration. The TMDL process  
6 provides an unbiased assessment of pollution in the  
7 watershed and leads to the development of science-based  
8 regulations, policy and management recommendations to  
9 restore water quality.

10           Without such an official comprehensive and  
11 even-handed water quality analysis, it will be difficult  
12 if not impossible to move beyond acrimony to identify the  
13 most important sources of impairments and fine practical  
14 solutions.

15           Maintaining the 302(d) listing of nitrogen and  
16 phosphorus will permit this essential data-gathering  
17 effort to proceed as scheduled.

18           Finally, public education is at the heart of most  
19 efforts to improve water quality, and we believe that the  
20 proposed delisting sends the wrong message to the citizens  
21 of Sonoma county. Even the news that a delisting had been  
22 proposed, caused many citizens to remark to us how  
23 wonderful it is that the Laguna's nitrogen and phosphorus  
24 problems had been solved, when this is plainly not the  
25 case.

1           To raise public awareness and a sense of  
2 individual commitment and responsibility among Sonoma  
3 county residents requires clear and frank communication  
4 about the nature and extent of the Laguna's water quality  
5 impairments.

6           Rather than delisting the Laguna for nutrients,  
7 we ask that the State Board use its influence to  
8 fast-track a nutrient TMDL for the Laguna. This fair and  
9 firm base of data will finally allow the community to move  
10 forward with restoring the Laguna to health.

11           Thank you.

12           CHAIRPERSON DODUC: Thank you, Mr. Schurman. At  
13 this time, I'd like to welcome the Honorable Noreen Evans,  
14 Assembly member from the 7th District. Thank you for  
15 being here with us today.

16           ASSEMBLY MEMBER EVANS: Thank you very much for  
17 allowing me this opportunity to speak to you.

18           I am here to address the September 2005 proposals  
19 to delist the Laguna de Santa Rosa as a nitrogen and  
20 phosphorus impaired waterway under Section 303. And I  
21 wrote the Board a letter a couple of weeks ago. I've  
22 spent most of my political career being involved in  
23 restoration projects for local waterways, and that  
24 includes the Laguna de Santa Rosa and the Santa Rosa  
25 Creek, which flows into the Laguna.

1           And against this backdrop, the message that I  
2 have for you today and the request I have for you today is  
3 very simple. Please reject the proposals to delist the  
4 Laguna. The regional board has opposed this proposal,  
5 because there is no evidence I believe to support it.

6           The Laguna is unhealthy. We all know that. And  
7 we also know that the nutrients are contributing to this  
8 unhealthy condition. Absent a compelling reason and solid  
9 scientific evidence, I believe that the State Board should  
10 not take any action that could potentially make things  
11 worse in the Laguna. And without scientific evidence,  
12 solid scientific evidence, to support it, delisting the  
13 Laguna could potentially create an arbitrary precedent  
14 that could possibly damage efforts to restore other  
15 waterways throughout the State of California.

16           What I mainly want to impress upon you today is  
17 the importance of the Laguna to the people that I  
18 represent in Sonoma county. In 1990, Sonoma county voters  
19 passed a tax initiative underwhich they taxed themselves  
20 to restore and preserve open space and agriculture in the  
21 County of Sonoma. That initiative specifically identified  
22 the Laguna de Santa Rosa as an area that would be  
23 protected by this tax.

24           More recently the community has come together to  
25 craft a plan for Laguna revival and it has been very, very

1 active in trying to eradicate Ludwigia within the Laguna.  
2 State and local governments have contributed nearly \$2  
3 million in support to the plan to restore the Laguna de  
4 Santa Rosa.

5           The Laguna serves a number of different roles in  
6 Sonoma county. It features prominently flood control,  
7 wildlife habitat, environmental education, public  
8 recreation and wastewater discharge.

9           The biggest challenge that I think we have facing  
10 the Laguna de Santa Rosa is the need for proper  
11 restoration and proper management, so that no one of these  
12 uses dominates to the destruction or the detriment of the  
13 other uses. And the effectiveness of this collective  
14 effort and the use of public funds that we have all  
15 contributed from the local to the State level rests on  
16 maintaining the 303(d) listing, I believe, because the  
17 Laguna's problems are closely related to the nutrient  
18 impairment.

19           Without nutrient control the Laguna will continue  
20 struggling with its current challenges, and they are big  
21 ones, and they are very expensive and they also have a lot  
22 of risks to public health. Elevated nutrients have been  
23 contributing to the growth of Ludwigia which is extremely  
24 invasive and destructive. This plant has altered a  
25 number -- a large portion of the Laguna's ecosystem. And

1 it's extremely difficult to remove and eradicate. It's  
2 accelerated sedimentation. It's decreased flood control  
3 capacity in the Laguna. And because of its impacts, it's  
4 actually inhibiting our ability to control West Nile  
5 vector.

6 My community locally is focused on finding  
7 solutions for the flood control and the West Nile  
8 challenges in the Laguna as well as its impaired status.  
9 My colleagues and I in the Legislature are also intent on  
10 addressing these and similar issues statewide. And I  
11 believe that delisting a nutrient-impaired waterway like  
12 the Laguna would be inconsistent with the completion of  
13 the work that we're trying to do both locally and  
14 statewide.

15 Many of my constituents are here today to urge  
16 you to reject this proposal. I am proud to join them, and  
17 I thank you very much.

18 CHAIRPERSON DODUC: Thank Assembly Member Evans.

19 Mr. Denver Nelson.

20 (Thereupon an overhead presentation was  
21 Presented as follows.)

22 DR. NELSON: Good morning. My name is Denver  
23 Nelson. I'm a retired neurosurgeon from Eureka,  
24 California. I've lived there about 30 years. I've had a  
25 place on the Klamath River for about 25 years. I make

1 many trips up and down the river in my boat to fish and to  
2 take people up the river. I'd be happy to take you up the  
3 river if you ever come up there. It's a beautiful place.

4 I'm here to ask you to follow the staff's  
5 recommendation and list the Klamath River as sediment  
6 impaired. This is a picture at the mouth of the Klamath  
7 River. I've worked on other sediment TMDLs in the north  
8 coast area. And I have to say I was somewhat taken aback  
9 to realize that the Klamath itself was not listed as  
10 sediment impaired. I hope that this current list will  
11 rectify that situation.

12 --o0o--

13 DR. NELSON: The Klamath drains about 10 million  
14 acres. The Klamath River itself starts up here at the  
15 outflow of Upper Klamath Lake and goes about 200 miles  
16 down to the mouth. I'm going to show you a series of  
17 pictures of the Klamath River and the sediment produced  
18 between Weitchpec, which is right here and the mouth,  
19 which is down here.

20 --o0o--

21 DR. NELSON: Almost every river, some of them  
22 aren't even named on this slide, between the Oregon border  
23 and San Francisco Bay are listed as sediment impaired.  
24 For reasons that are not clear to me the Klamath was not  
25 listed. The Smith is a different geologic type and

1 probably should not be listed ever. But the Klamath  
2 clearly is sediment impaired. The problem now is that the  
3 data to make the listing is hard to come by because there  
4 is no historic data.

5 --o0o--

6 DR. NELSON: So I decided I would try and  
7 convince you with pictures. This is a 1948 picture of the  
8 Klamath River. This is Klamath Glenn. This is the river  
9 about the lower 30 miles up to this point.

10 At this point, there had been no logging. This  
11 is all virgin old growth redwood that you see here. Since  
12 that time it's all been logged, and the trees that you'll  
13 see in the next slide and subsequent slides are between 2  
14 years and maybe 50 years old. Probably the world's  
15 tallest trees are in all of these valleys that you see  
16 here, but they're now gone.

17 --o0o--

18 DR. NELSON: If you compare this picture, which  
19 is this one up here, with the current day picture, here, I  
20 think you can see that the river in this older picture is  
21 a V shape. There are some bars along the river, but most  
22 of the river is water. Whereas in the current day  
23 pictures there are hug sand bars all the way up and down  
24 the river, and the river is now V-shaped. My point is  
25 that there has been a tremendous change in the river and

1 the time between 1948 and now.

2 This is Starwein flat, and I'm going to take you  
3 on a little tour up the river in my boat.

4 This is the Starwein Flat. It's actually about  
5 40 feet of gravel sediment that wasn't there, 100 years  
6 ago.

7 --o0o--

8 DR. NELSON: This was another picture of Starwein  
9 flat.

10 --o0o--

11 DR. NELSON: These are some wild cows. To give  
12 you an idea of the perspective, this is a cow here and  
13 there's a cow way back here. And the size of the cow  
14 would lead you to believe that this is about a half a mile  
15 of gravel measured several miles long and that's true all  
16 the way up and down the river.

17 --o0o--

18 DR. NELSON: This is -- I have a lot of old  
19 indian friends on the river and I got some of these  
20 pictures from them. They're hard to come by because  
21 there's no roads on the Klamath. The only way you can see  
22 the Lower Klamath River is by boat. This is an Indian dug  
23 out canoe. This picture is from about 1890. You can see  
24 the Klamath is V-shaped. There's very little in the way  
25 of sand bars. Pay particular attention to this part up

1 here.

2 --o0o--

3 DR. NELSON: There is a current picture of that  
4 same area. You can see there's a huge sand bar here now.  
5 This area, which was this area up here, was clear-cut  
6 about 15 years ago. And then it was burned with a  
7 helicopter torch all perfectly legal. I thought it was a  
8 little crazy, but they did it.

9 And of course the next winter this whole hillside  
10 fell into the river and damned the river. This is now 15  
11 years later. You can still see there's raw slides present  
12 here.

13 --o0o--

14 DR. NELSON: I don't have a picture of that slide  
15 as it happened, but this is a slide about 20 miles further  
16 up the Klamath that occurred last year. I tried to get my  
17 wife to stand down here at the bottom for perspective, BUT  
18 she refused

19 (Laughter.)

20 CHAIRPERSON DODUC: Smart woman

21 DR. NELSON: So you'll have to take my word that  
22 this is the Klamath River here, and this is a huge slide.  
23 These trees up here are probably about close to 100 feet  
24 tall. This slide measures about 300 feet from here to  
25 here. Obviously, a source of a tremendous amount of

1 sediment.

2           As far as the cause of it, you can blame many  
3 things, but there are spontaneous slides along the Klamath  
4 that occur like this all the time. There is an old road  
5 that went across here. There's also been some logging up  
6 in this area. But I'm not here to put blame on the slides  
7 just to point out that there are slides.

8                               --o0o--

9           DR. NELSON: This is a about another 1890's  
10 picture. Here's a couple Indian dug outs. You can see  
11 them -- this is actually all water in the river. This is  
12 the slope of the river. There's hardly any bank over here  
13 on the other side.

14           And this is a present-day picture of the same  
15 area. These trees here are these trees here. I'm having  
16 a little trouble with the pointer. But you can see that  
17 the river now is completely full of gravel. The only  
18 water in the River is over here.

19                               --o0o--

20           DR. NELSON: This is the Blue Creek Lodge, which  
21 was present until the floods of '55 and '64 took it out.  
22 This is the Blue Creek Lodge boat.

23           This is a present-day picture taken just about  
24 where this boat is looking down this way. You can see  
25 there's a huge gravel bar here. And this is the site of

1 the Blue Creek Lodge over here. There's some more logging  
2 activities up here.

3           These trees in this area are probably about 40 or  
4 50 years old. There are isolated pockets of old growth  
5 left, but most of the trees are logged off.

6                           --o0o--

7           DR. NELSON: This is my place up on the Klamath  
8 River. I own one of the last old growth redwood trees.  
9 It's quite beautiful, I think. This is Surpur Creek. I  
10 own the mouth of Surpur Creek here.

11           Surpur Creek is like most of the creeks on the  
12 Lower Klamath River, it's full of sediment.

13                           --o0o--

14           DR. NELSON: This is a picture from the 1940s of  
15 my beach. You can see from the style that it's a fairly  
16 old picture. You can also see that the beach at my place  
17 was mostly sand and there wasn't much on the other side in  
18 the way of a gravel bar.

19                           --o0o--

20           DR. NELSON: This is the way it looks now. This  
21 is the mouth of my creek. That's my boat. That's my  
22 wife. That's my dog.

23                   (Laughter.)

24           DR. NELSON: And this is a gravel bar on the  
25 other side of the river, which you can see is quite large.



1 --o0o--

2 DR. NELSON: This is a picture of that same clear  
3 cut. You can see the gravel bar below it. I believe that  
4 part of the reason that there's excess sediment in the  
5 river is that clear cuts in that area are usually not  
6 yarded as I would like to see them yarded, and they leave  
7 huge scars. You can see the yard that was up here and all  
8 these tracks going up like this make for a lot of sediment  
9 the first time it rains.

10 --o0o--

11 DR. NELSON: This is another picture of the  
12 same -- this is my wife and my dog again and this is my  
13 boat over here. And this is a picture of the sediment  
14 plug that's in the mouth of Surpur Creek. You can see it  
15 has lots of different sizes of gravel and rocks.

16 --o0o--

17 DR. NELSON: This is a picture looking down from  
18 my place at Surpur Creek. This is an old Indian dug-out  
19 canoe. The water -- it's a little hard to tell here, but  
20 the water goes from right here over to here.

21 --o0o--

22 DR. NELSON: This is a present-day picture of the  
23 same area. This is this right here. And you can see now  
24 that there's a huge gravel bar in this area, which was  
25 where this boat is sitting.

1 --o0o--

2 DR. NELSON: In the fifties and sixties, there  
3 was an excursion boat called the Klamath Queen. This is  
4 the Klamath Queen. It's up about where they used to turn  
5 around, which was about 30 miles up the river. There's an  
6 excursion -- jet boat excursion that goes up there now  
7 that only can go up about a 15 miles because the river is  
8 too shallow. If you look at this rock right here, this is  
9 the district supervisor from Humboldt County Jill Geist  
10 and her son, who are sitting about on top of that rock and  
11 can you see that the sediment that's on top of the rock is  
12 probably 10 or 20 feet now. That's this rock right here  
13 where they're sitting.

14 --o0o--

15 DR. NELSON: This is a picture of sediment. And  
16 I especially like the picture because this is a Mountain  
17 Lion that was wandering around on the beach. I've never  
18 seen one on the Klamath River. He just sat there and  
19 looked for awhile.

20 --o0o--

21 DR. NELSON: This is a picture of Judge Sawyer.  
22 I put it in there because in the late 1800s, of course,  
23 there was a lot of hydraulic mining going on in  
24 California. And the debris from hydraulic mining were  
25 causing floods in the valley and destruction of farm land.

1 And eventually a man named Edwards Woodruff brought a  
2 lawsuit against the North Field Mining Company. And it  
3 was decided in Sawyer's court.

4 And what Judge Sawyer did was go out and take  
5 numerous trips to the mines and took numerous trips to the  
6 rivers and looked at all of the sediment that was being  
7 produced by the hydraulic mining. And in 1883 he made a  
8 ruling that said hydraulic mining was legal, but that the  
9 debris produced by hydraulic mining had to stay within  
10 your property and could not affect somebody else's  
11 property.

12 I put him in there because he did this on the  
13 basis of almost no data and on observation. And I would  
14 encourage you to go along with your staff recommendations  
15 to declare the sediment -- declare the Klamath River  
16 sediment impaired. This is more sediment. That's a bear.

17 Thank you very much.

18 CHAIRPERSON DODUC: Thank you, Mr. Nelson.

19 Ms. Brenda Adelman.

20 MS. ADELMAN: Brenda Adelman, Russian River  
21 Watershed Protection Committee. Thank you for holding  
22 this hearing today.

23 Our group -- and we're a small group based in the  
24 Guerneville area. And we have many members who own  
25 property in the Lower Russian River but live in the

1 greater Bay Area. Many of them don't live in Guerneville.  
2 And we've been concerned about this issue since -- we've  
3 been in existence since 1980, and we've been working on  
4 this issue since the early 1990s, and we have a lot of  
5 concerns. And it might be good if I mentioned which issue  
6 I'm talking about.

7 (Laughter.)

8 MS. ADELMAN: Our big concern and the main reason  
9 I'm here today is that we oppose the delisting for the  
10 Laguna de Santa Rosa for nitrogen and phosphorus.

11 We have not yet submitted written comments, and  
12 we'll surely do so by the deadline on the January 17th.  
13 We fully support and have signed on to the comments of  
14 Nancy Kay Web, but we also fully support almost all of the  
15 comments we've heard this morning on the issue, with the  
16 exception of Mr. Johns.

17 And we basically were authors of a form letter  
18 that went around, that we sent out to about 2,000 people.  
19 And I want to say this whole issue has generated a great  
20 deal of public concern. And I've seen many of the  
21 letters. People have E-mailed me copies of letters they  
22 have sent. And I'd be very interested to know what the  
23 full response was. I don't think there's anyway of  
24 knowing, at this point in time, how many of those form  
25 letters were sent in for instance, and how many other

1 letters, because I know there was extensive interest. And  
2 I would request that the record, the full record, be made  
3 available to the public in some manner. At this point, I  
4 don't know how I might access all of that.

5 We support the letter of the North Coast Board in  
6 particular the Sonoma County Water Coalition, City of  
7 Sebastopol, Russian River Chamber of Commerce, the Laguna  
8 Foundation, representative Noreen Evans, and I'm sure many  
9 others that we haven't seen yet.

10 There -- one of the major issues for us and for  
11 the community is that it is my understanding that the  
12 policy on 303(d) listing and delisting indicates that  
13 hearings should first be held at regional boards. Because  
14 to be quite honest, coming to Sacramento is not an option  
15 for a lot of people. So I see myself as being here today  
16 representing a lot of people. Can't give you an exact  
17 number. But I know that you would have -- had this been  
18 held in Santa Rosa, we would have seen a lot more people  
19 attending.

20 And there's just great concern that there's a  
21 feeling that the -- there's been a bypass of the regional  
22 board in a sense. And it's especially important that they  
23 feel strongly that this delisting is a mistake. So you  
24 not only have the community feeling they have missed out  
25 on an opportunity to express themselves directly, but that

1 the regional board feels similarly, or at least that's my  
2 interpretation. And I believe I heard that today from Mr.  
3 Gwynne.

4           There's so much evidence in the Laguna, anyone  
5 who visits the Laguna, looks at pictures of the Laguna,  
6 experiences the Laguna firsthand it's already been aptly  
7 described by others this morning. It's perfectly obvious  
8 that this is a severely degraded waterbody. And there's  
9 concern that the dissolved oxygen listing would remain,  
10 but dissolved oxygen is not something that gets  
11 discharged. Low dissolved oxygen is a result not a cause.

12           And there's widespread belief that the nitrogen  
13 and the phosphorus are key stimulants, biostimulatory  
14 substances that are creating the problems with the Laguna,  
15 as has been mentioned already, and I don't want to, you  
16 know, repeat what has already been said in writing or  
17 verbally, except just to emphasize it.

18           And it just feels to me like anyone who  
19 experiences the Laguna firsthand wouldn't even dream of  
20 delisting it for nitrogen and phosphorus until there's  
21 been an opportunity to fully explore the sources of the  
22 problem.

23           And it's almost as if by delisting, you're asking  
24 for a TMDL to precede the listing. And that doesn't -- it  
25 isn't what most people consider the intent of the Clean

1 Water Act. Rather the listing is there when you know you  
2 have a problem and you need to explore it further.

3           So anyway -- excuse me a minute, I'm just trying  
4 to catch up with myself here. I think most of the --  
5 there's been a report submitted a couple years back by  
6 IOS, which is a report written by Dr. Dan Wickham and Dr.  
7 Robert Rawson on the phosphorus loadings from Santa Rosa's  
8 wastewater into the Laguna. And it's just been indicated  
9 quite extensively that there are large amounts of  
10 phosphorus in the Laguna. Santa Rosa's wastewater isn't  
11 the only source by any means, but it certainly is a  
12 critical source.

13           And basically the document puts forth the concept  
14 that this phosphorus is -- and I'm not a scientist, so I'm  
15 not the best person to get into this, but there's an  
16 interplay between the nitrogen and the phosphorus that  
17 would not happen to the extent it does if there wasn't so  
18 much phosphorus available in the environment there.

19           CHAIRPERSON DODUC: Excuse me. Let me interrupt  
20 and ask the staff, do we have this report in our record?

21           ENVIRONMENTAL SPECIALIST WILSON: The IOS report?

22           MS. ADELMAN: Yes, it was from 2000 and it was  
23 used in the last listing process.

24           MS. WEB: It's an attachment to the web comments  
25 and Mr. Yates has it now on a CD.

1           CHAIRPERSON DODUC: Could you please identify  
2 yourself for the court reporter.

3           MS. WEB: My name is Nancy Kay Web. And I've  
4 submitted comments and attachments that are on the CD.  
5 And I think Mr. Yates has them at this point.

6           CHAIRPERSON DODUC: Thank you. Please continue.

7           MS. ADELMAN: And I'm going to basically wrap-up.  
8 It's kind of ironic, there's a task force that was alluded  
9 to by Dan Schurman that consists of many governmental  
10 entities looking for a proposed solution to the Ludwigia  
11 problem, and a great deal of money has been pledged. The  
12 City of Santa Rosa has pledged \$150,000 to help in their  
13 part of the this task force. And yet, on the other hand,  
14 they are opposing or supporting the delisting and it just  
15 seems to me that there's kind of a disconnect there.

16           I definitely support fast track for the TMDL.  
17 And I think it's a critical problem. I think that the  
18 Laguna is a critical resource for many reasons. And  
19 living in Guerneville I can tell you, while we haven't had  
20 a major flood in a few years, it could come any year now.  
21 We're due for another big one. And the more water that  
22 can be absorbed by the Laguna, the less flooding there is  
23 in Guerneville. And we've had some devastating floods  
24 down there.

25           And I'm deeply concerned that this Ludwigia

1 problem is going to exacerbate the problems in our area,  
2 not to mention the other problems, public health problems,  
3 impacts on recreational values, economic values in the  
4 lower river. All of these things are impacted by the  
5 situation in the Laguna that needs to be addressed by the  
6 303(d) process.

7 Thank you very much.

8 CHAIRPERSON DODUC: Thank you. I appreciate you  
9 coming up here for this workshop.

10 I'd like to ask staff to respond the question.

11 ENVIRONMENTAL SPECIALIST WILSON: I'd just to  
12 respond to the question about the number of letters  
13 received. On the form letter, we've received 213 letters.  
14 And on other letters related to the Laguna about 7 or 8  
15 letters with much more detailed comments.

16 CHAIRPERSON DODUC: And will the record be  
17 available to the public on line?

18 ENVIRONMENTAL SPECIALIST WILSON: On line? The  
19 record is not available on line, but we can -- we're happy  
20 to open up our records to anybody who would like to review  
21 them.

22 CHAIRPERSON DODUC: Thank you.

23 Mr. Mike Sandler.

24 MR. SANDLER: Thank you, Chairman of the Board  
25 and Water Board staff. My name is Mike Sandler. I am

1 program coordinator of Community Clean Water Institute,  
2 which is a citizen action group based in western Sonoma  
3 county. Our office is in Sebastopol. And we run a  
4 citizen monitoring program, where we train volunteers to  
5 go out and test water quality in rivers and streams  
6 throughout Region 1. Our main focus is the Lower Russian  
7 River at this time. We also have water quality monitors  
8 on Santa Rosa Creek and Laguna de Santa Rosa and several  
9 tributaries to the Lower Russian River.

10 I have already submitted and I also brought  
11 another copy I'd like to submit today of about 12 pages of  
12 comments, and as well, referring to an Excel spreadsheet,  
13 which I have E-mailed to the clerk of the Board, but I've  
14 also printed out a copy of that, which I'll submit into  
15 the record. And for those in the audience who are  
16 interested, it is also accessible on our website  
17 [www.ccwi.org](http://www.ccwi.org).

18 And so I will jump into just hitting some  
19 highlights from some of our comments.

20 First, I'd like to say that we are pleased to  
21 have our data cited as lines of evidence in several of the  
22 decisions that were made in the 303(d) list revision. I  
23 think it's at testament to the growing importance of  
24 citizen monitoring. And I was assisted in the compilation  
25 of our original data submittal in 2004 by members of the

1 State Water Board Clean Water Team who helped us get some  
2 of our data into the right format and hopefully our  
3 long-term goals is to make that compatible with the swamp  
4 protocols.

5           And I feel, you know, a little bit off the  
6 subject, but in the age of diminishing budgets, I feel  
7 that citizen monitoring can play an increasingly important  
8 role in collecting baseline data to make some of these  
9 decisions.

10           And in many cases, we agreed with the way our  
11 data was used and we are pleased with that. We would have  
12 appreciated a little bit more interaction with the State  
13 Board. And hopefully in the future there will be more  
14 interaction in terms of what does the data mean, because  
15 there were a few areas where we felt our data was not used  
16 appropriately.

17           The first one I'd like to mention is the decision  
18 to delist Pocket Canyon Creek for turbidity. That's in  
19 the Guerneville HSA. The reason that we disagree with  
20 that conclusion is that our data is baseline data. We  
21 send our monitors out once per month without regard to  
22 whether it's a storm event or not. And part of that is  
23 due to the goal of the citizen group there, which has  
24 provided us with citizen monitors. Their goal is to  
25 collect baseline data in anticipation of a timber harvest

1 plan.

2           And the way we collect baseline data is we go out  
3 once per month throughout the year. And the standard for  
4 listing turbidity is if turbidity is seen to be 20 percent  
5 above baseline. So using our baseline data, to show 20  
6 percent above baseline doesn't really make sense.

7           We would like to refer the State Board to other  
8 data which might show that as occurring or not occurring,  
9 and that would be the Russian River First Flush  
10 Monitoring. The data that's been collected by the Russian  
11 River First Flush would show -- well, we've seen some of  
12 that data, and it does show 20 percent above baseline,  
13 meaning 20 percent above the data that we've collected.

14           And I actually attached a photo on page 5 of  
15 our -- it just looks like brown, but basically that's a  
16 photo taken during first flush in 2004, which was October  
17 19th. First flush, as you may know, is the first major  
18 rain storm of the season usually occurring in late October  
19 early November. And about 200 volunteers go out in the  
20 Russian River each year and collect data during that  
21 storm. It's a good chance to get out there in the rain  
22 and see what you're creeks look like when it's really --  
23 when the water is really coming down.

24           There's also data available from the Russian  
25 River Keeper, which is based in Healdsburg on the Russian

1 River First Flush. And a company, Prunuske Chatham, PCI,  
2 based in Occidental, California, they have storm event  
3 water quality data in the Jenner area. And we feel that  
4 some of that storm-water data could show the high  
5 turbidity. But at this point, we would object to the  
6 Pocket Canyon being delisted based on our data.

7           The second objection is to the delisting of the  
8 Laguna de Santa Rosa for nutrients, phosphorus and  
9 nitrogen. And I won't repeat what we've already heard  
10 about that. But I would just like to add that we've  
11 collected additional data since our original 2003 data.  
12 Our 2003 data showed 9 out 12 samples exceeded .1  
13 milligrams per liter phosphorus. When we combine that  
14 with 2004 and 2005 data, 53 out of 57 samples exceeded .1  
15 milligrams.

16           So then in terms of narrative, I have attached a  
17 couple of photographs, which were taken by a group called  
18 Laguna Preservation Council, and it just shows the  
19 Ludwigia plant. And for those of you who are interested,  
20 it looks green, and that's because it's a green plant.  
21 And also an article here from the Santa Rosa Press  
22 Democrat about the spreading Ludwigia. And the little  
23 white dot in all the green is Dr. Anna Sears from the  
24 Laguna Foundation. She goes around in hip waiters and  
25 collects a lot of very important information.

1           My last point regarding the Laguna de Santa Rosa  
2 delisting is that millions of dollars of public money have  
3 been put towards the eradication of the Ludwigia, and  
4 countless hours of staff agency time has gone into that.  
5 And just that amount of resources being devoted to that  
6 problem should be evidence enough that it's a major issue.

7           Okay. So I want to just go on to a few other  
8 points. We do concur with several of the conclusions in  
9 the listing and delisting policy -- or listing and  
10 delisting recommendations. On page 10 I note the issue of  
11 conductivity listing in Santa Rosa Creek and I just want  
12 to read that one section.

13           We concur with your recommendation to list Santa  
14 Rosa Creek for conductivity. Results seen in our 2003  
15 data have now been augmented by data from 2004 and 2005.  
16 When we add in our 2004 and 2005 data, and I reference the  
17 worksheet, it shows impairment in Santa Rosa Creek for  
18 conductivity of 19 out of 24 samples exceeding the 320  
19 microSiemen level. So this listing is warranted.

20           And just to put that in perspective with the  
21 Laguna de Santa Rosa, 58 out of 62 samples in the Laguna  
22 de Santa Rosa were above 320. And Big Sulphur Creek, as  
23 well, which is a tributary above Healdsburg also had very  
24 high readings.

25           CHAIRPERSON DODUC: Mr. Sandler, are you

1 referring to a different submission, because I don't have  
2 that statement on my page 10.

3 MR. SANDLER: I'll have to see. It came out on  
4 page 11.

5 CHAIRPERSON DODUC: All right. So it's page on  
6 11.

7 MR. SANDLER: It just have been the way it  
8 printed, it looks like one of those pages. I'm not sure.

9 CHAIRPERSON DODUC: I just want to make sure we  
10 have it in the record.

11 MR. SANDLER: Thank you. I also would like to  
12 point out Colgan Creek, which I do mention on page 12,  
13 which may be page 13 on yours, Colgan Creek is a tributary  
14 to the Laguna de Santa Rosa. And we have found elevated  
15 readings for conductivity and phosphorus on Colgan Creek.  
16 We have been monitoring Colgan Creek for awhile and  
17 thought it was the main part of the Laguna de Santa Rosa  
18 and later found it was actually its own creek. So that  
19 might merit further investigation by the State Board.

20 And the rest of my comments are listed in  
21 writing, so I won't go over those. But those are just  
22 some of the highlights. I also agreed with the previous  
23 person, Ms. Adelman, that more input from the regional  
24 board would be useful and then you wouldn't have to listen  
25 to all of us come up here.

1           But, yeah, as you've seen from the 200 letters,  
2 the major issue is the delisting of the Laguna, but  
3 hopefully this other information was clarified. And I'd  
4 be happy to answer any questions that the State Board  
5 might have or to work with you further on using our data.  
6 And I was very happy to see our data being used. That's  
7 the purpose of our work and it makes the volunteers'  
8 efforts rewarded when it actually gets put into policy.

9           So thank you.

10          CHAIRPERSON DODUC: Thank you.

11          Mr. Alan Levine.

12          MR. LEVINE: If I live long enough, I'll get down  
13 to the level of the microphone. Does it go up?

14          No, it doesn't. I'll rip it apart.

15          My name is Alan Levine, and I represent Coast  
16 Action Group. We're signatories to the letter that Ms.  
17 Web submitted. And we oppose the delisting of the Laguna  
18 Santa Rosa for phosphorus and nitrogen.

19          I have this heartfelt -- I'm struck in my heart  
20 by how many passionate advocates there are for this  
21 waterbody. I'm used to dealing with water bodies on the  
22 North Coast that if you have 4 people that are supporting  
23 protection of beneficial uses, it's a big deal. So it's  
24 nice to see that that many people are passionate about the  
25 Laguna.

1           The reason for the proposed delisting given in  
2 the State Board documentation is that there's no numeric  
3 standard. And I just want to state that a narrative  
4 standard is competent for evaluating the Laguna's nutrient  
5 problem.

6           It is possible to administrate this listing with  
7 a narrative standard. And such narrative standards are  
8 consistent with State and federal law.

9           Now, the complaint is how do we administer this  
10 without numbers? The absolute numeric standard is not  
11 necessary for the listing. At some point you might want  
12 to come up with some standards that you can deal with  
13 stuff, but it is obvious and clear that the listing is  
14 merited by the narrative issues that have been presented  
15 in all the documentation in the file.

16           All that has to be known is that phosphorus and  
17 nitrogen are promoting the diminished or polluted  
18 conditions that exist in the Laguna, and whether or not or  
19 at what level the limiting factor begins probably should  
20 be ascertained when the TMDL is done. And I think that's  
21 part of what a TMDL is for, to actually delineate what is  
22 the actual amount of pollutant that can be allocated as an  
23 input and still meet water quality standards, is that not  
24 true?

25           The data and science in the record shows that

1 there's absolutely no question that there is abundant  
2 oversupply of phosphorus and nitrogen. And this is in  
3 tons or hundreds of tons of each pollutant per year.  
4 There's a lot of nutrient inputs being put in.

5           There's no question that phosphorus and nitrogen  
6 are promoting growth of nuisance plants, and a result in  
7 low DO, which is a factor in the -- a factor in the  
8 protection of beneficial uses, the co-water fishery.

9           And as part of the nutrient cycle, these  
10 pollutants will not allow water quality standards ever to  
11 be met, unless they are individually dealt with. Most of  
12 the discussion today was about the Ludwigia as a nuisance  
13 factor, but we've got to remember that there's a cold  
14 water fishery here. There's no spawning in the Laguna,  
15 but the Laguna is a fishery transmission channel, and it's  
16 historically been used by Coho and Steelhead. And with  
17 the existing conditions that fishery component is  
18 impaired.

19           The only question is how much is too much? And  
20 that's what a TMDL is to be promulgated for. And the  
21 assessment and the analytic process in the TMDL that's  
22 what you're going to come up with and answer is how much  
23 is too much.

24           The weight of evidence shows non-attainment of  
25 water quality standards and is evidence in opposition of

1 the proposed delisting.

2 Now, reliance on information in the file from the  
3 City of Santa Rosa, the data that they have presented does  
4 not support the delisting. And the fact that they present  
5 shows over-abundance of the polluting chemicals.

6 Nitrogen and phosphorus are controllable factors  
7 in the City's NPDES permit. That's a reason for  
8 maintaining the listing, because they're a controllable  
9 factor. I want to state that the City of Santa Rosa isn't  
10 the only source of phosphorus and nitrogen. There's a lot  
11 of agricultural impacts and there's a lot of habitat  
12 modification resultant from agriculture that is part of  
13 the problem. So everybody eventually is going to have to  
14 pitch in when a TMDL is done.

15 The city's own reporting by Merritt Smith  
16 Consulting in conclusion show excessive nitrogen and  
17 phosphorus, enough to promote growth and be fishery  
18 limiting factors. The City, in Merritt Smith's report,  
19 argue against the burden of listing nitrogen and  
20 phosphorus while maintaining the argument that further  
21 study is needed. I would argue that the further study  
22 should occur when the TMDL is done.

23 Removal of nitrogen and phosphorus from the list  
24 would have the following consequences: I want to point  
25 out that it isn't understood by the State Board that there

1 is a TMDL for nitrogen. However, that TMDL is not  
2 competent. In fact, it's totally incompetent. It doesn't  
3 deal with the proper load allocations and assessments that  
4 that TMDL was, I think, promoted and paid for by the City  
5 of Santa Rosa. And it just occurred to me that for that  
6 pollutant nitrogen for which the TMDL is written, you  
7 cannot delist until you attain water quality standards.  
8 So if you have a TMDL in operation for a specific  
9 pollutant, let's say it was sediment, until the TMDL shows  
10 that you met -- or assessment of that waterbody shows that  
11 you have met water quality standards, that is being  
12 violated, a listing must be maintained.

13 It's a violation of both State and federal law by  
14 not listing for all known pollutants. And the quotation  
15 is all waters that are impaired shall be listed and all  
16 known pollutants shall be considered in the listing.

17 Removal of phosphorus and nitrogen from the  
18 listing will lower the emphasis and the need to address  
19 those specific factors in the currently degraded  
20 conditions. And it will also limit the impetus of dealing  
21 with an important nuisance that really is a threat to  
22 human health.

23 Aside from the co-water and swimmable aspects of  
24 the problem here, we're dealing with a potential hazard to  
25 health and people could die. You can't get rid of the

1 mosquitos until you get rid of the Ludwigia. You can't  
2 get rid of the Ludwigia unless you want to go in and  
3 remove it all by hand, and it comes back really fast  
4 because there's lots of nutrients supporting its regrowth.

5           Also, reducing the number of pollutants reduces  
6 the possibility for appropriate prioritization, and that's  
7 what I was just arguing for. This should be a very high  
8 priority project, because of the nuisance factor.

9           And I want to digress here and switch from the  
10 Laguna to the Klamath. It's kind of a trick that I'm  
11 playing on you here, but there is a connection. The most  
12 current and up-to-date and in-depth nutrient studies I  
13 think done in the world today are being done on the  
14 Klamath River, where you have nutrient laden lakes. And  
15 when they discharge, sections of the lower river show  
16 immediate response in plant and algae growth, macrophytes  
17 like Ludwigia, but not the same plant.

18           And the linkage of the information derived in the  
19 Klamath studies and the Klamath is listed in sections as  
20 impaired by nutrients. But the linkage of the effects of  
21 the pollutants that promote such conditions are very  
22 demonstrable and -- it's really obvious what's going on  
23 here, but the exact numbers may -- of what are the  
24 limiting factors or the numeric standards of what is  
25 appropriate is going to be a difficult endpoint to

1 achieve, but scientists are working on that, and they're  
2 making progress there.

3 But you may never have an exact endpoint, numeric  
4 endpoint, but that also speaks against the delisting  
5 problem.

6 And then also a last word on the Klamath, which  
7 is also listed as impaired by sediment in the upper reaches  
8 but not the lower reaches as you heard before, sediment  
9 goes downstream. And the sediments that are impairing the  
10 upper aspects of the Klamath River will and have, as you  
11 have seen by the pictures, make it to the lower river and  
12 the estuary. And impairment of estuarian function by  
13 sediments limits the ability in certain life stages of  
14 salmonids to survive. Salmon need estuary functions to  
15 smoltify.

16 Smoltification is a process where they go back  
17 and forth between fresh and saline waters to adjust before  
18 they go out to sea. And when the whole place gets filled  
19 up, it doesn't work right anymore. And I support the  
20 listing of the lower section of the Klamath River also.

21 Thank you very much.

22 CHAIRPERSON DODUC: Thank you, Mr. Levine.

23 Mr. Bob Rawson.

24 MR. RAWSON: Good morning, Madam Chair and staff.

25 My name is Bob Rawson. And I'm a wastewater consultant.

1 And my background is in wastewater and soil  
2 bioremediation. I'm a Grade 5 Wastewater Operator, so  
3 I've operated or consulted on all of the wastewater  
4 facilities that discharge into the Russian River, either  
5 as an expert witness, an operator or a consultant basis.

6 And so I'm very familiar with those under all  
7 weather conditions, and so I've seen them at their worst,  
8 I guess. I'm also one of the authors Brenda Adelman  
9 mentioned.

10 On the report by IOS Corporation phosphorus  
11 loading and eutrophication in the Laguna de Santa Rosa.  
12 Some of that work is incorporated in Nancy Kay Web's  
13 document, which I believe you have and its appendices.

14 Particularly, I'm familiar with the Laguna de  
15 Santa Rosa, because my company and I were involved in a  
16 bioremediation of the Laguna de Santa Rosa in  
17 approximately 1999. There was an apple processing spill  
18 just to the north of Highway 12 where we used the bacteria  
19 we manufacture IOS-500 for bioremediation in oil fields  
20 and leach fields and such as that, for restoration a leach  
21 fields. But we used it in this case to bioremediate a  
22 section of the Laguna. And it actually came back to  
23 fairly clear and pristine conditions for a short period of  
24 time. And then it went back to its old ways.

25 And so in the course of doing this, I was taking

1 canoe trips up and down the Laguna and seeing the very  
2 obvious impacts of algae and Ludwigia growth. So you  
3 really don't even have to study this. Just your eyes are  
4 enough. As the pictures that were shown of the Klamath,  
5 just seeing it is enough, but of course Fish and Game  
6 knows and Regional Water Quality Control Board knows and  
7 anybody who goes there knows that it's impacted for  
8 nutrients.

9           And so recently, as a member of the Board of  
10 Northern California River Watch, we negotiated settlement  
11 agreement with the City of Santa Rosa. And they agreed to  
12 pay \$250,000 for restoration work in the Laguna. And  
13 we're going to direct that those funds towards the North  
14 Coast Regional Water Quality Control Board for the purpose  
15 of a TMDL for nutrients in the Laguna de Santa Rosa  
16 specifically for phosphorus and nitrogen and such.

17           And so it seems kind sort of counterproductive to  
18 delist something where funds are specifically being  
19 earmarked towards making the Laguna better and it's  
20 obvious that it needs to be made better.

21           So I'd like to add our concerns, Northern  
22 California River Watch and my own to the list of people  
23 that signed on to Nancy Kay's letter, and also reiterate  
24 what the Laguna Foundation and Noreen Evans, Mike Sandler  
25 from the Clean Water Institute, the Coast Action Alan

1 Levine and all those who have spoken, and the other people  
2 who have written letters to urge the Board not to delist,  
3 and also to look very carefully about any delisting in any  
4 of these tributaries to the Russian River, because all of  
5 them, at times of the year if you're out there in those  
6 storms and those winter periods of time and you're  
7 watching, you'll see the sediment and the -- and if you're  
8 out there in the summer, like I was in Green Valley Creek  
9 2 days ago you'll see the impacts. And they're there and  
10 they need to be studied. We need a TMDL.

11 Thank you very much.

12 CHAIRPERSON DODUC: Thank you.

13 Mr. Peter Ribar.

14 MR. RIBAR: Madam Chairman, my name is Peter  
15 Ribar representing Campbell Timberland Management from  
16 Fort Bragg, California. We manage 185,000 acres for  
17 Hawthorne Timber Company in coastal Mendocino county.

18 Back on June 10th, 2004, we did submit some  
19 additional information as requested by staff, with respect  
20 to data and other reports that we thought were relevant to  
21 the issue at hand. And although the staff has used much  
22 of our data in this proposed listing, we do not feel that  
23 they have used the other reports that we have submitted.  
24 And that those reports and the comments of those reports,  
25 the cautions contained in those reports, none of that is

1 reflected in the staff report.

2           First and foremost, we don't believe it is  
3 appropriate for staff to use the thresholds established by  
4 the Sullivan 2000 paper to set regulatory standards for  
5 streams in California. The Sullivan paper is a report  
6 issued by the Sustainable Ecosystems Institute in Portland  
7 Oregon. It has not been the subject to the level of peer  
8 review required for publishing in a typical science  
9 journal.

10           The development of guidelines based on this  
11 document is inconsistent with the staff report that states  
12 guidelines were based on scientifically based and  
13 peer-reviewed information.

14           Additionally, there's no evidence to suggest that  
15 Coho in northern California respond to fluctuations in  
16 water temperature the same way that Coho respond in other  
17 parts of the Pacific northwest.

18           In fact, the Sullivan paper contains cautions not  
19 to extrapolate their data for use elsewhere without  
20 validation. In fact, we did commission a report by  
21 Stillwater Sciences, a consulting firm, to look at  
22 temperature thresholds. And we've submitted this report  
23 numerous times, and we're going to submit it again for  
24 your edification, because we believe it shows issues that  
25 need to be addressed prior to using the thresholds from

1 Sullivan as the threshold for trying to determine whether  
2 water temperature is impaired.

3           Therefore, the Sullivan proposal or approach that  
4 they have advocated -- I think, and our company, believes  
5 that it has a lot of merit. But it simply needs to have  
6 additional peer review and studies in California to  
7 validate its use here.

8           The staff report also does not consider the  
9 inherent potential of a watershed's temperature regime.  
10 As evidenced by the data we submitted in 2004, there's  
11 tremendous spatial and temporal variability within these  
12 coastal watersheds.

13           Then why would the staff attempt to apply a  
14 single value, one-size-fits-all-threshold for temperature  
15 throughout an entire watershed. Clearly, there are select  
16 stream reaches that may never meet this 14.8 Celsius  
17 degree threshold. Because there are simply -- there are  
18 landscape features, such as geologic formations,  
19 vegetation characteristics or the simple orientation in  
20 the stream that would weigh on that.

21           Nowhere in the staff report is there  
22 acknowledgement that the proposed targets may not be  
23 achievable at all places at all times. It just simply  
24 doesn't occur.

25           We also believe that the analytical methods used

1 in the staff report are also somewhat flawed. Listing  
2 determinations based on the percentage of occurrences  
3 pooled by watershed that exceed this 14.8 degree Celsius  
4 creates bias.

5           For example, 9 -- for example, since 2002,  
6 Campbell has removed the thermographs from historic  
7 locations deemed cool. And we went ahead and put them in  
8 the other places that we thought were hot in order to try  
9 to better isolate and characterize those areas of concern.

10           This, in turn, has substantial effect on the  
11 results of the analysis. Without consistent temporal and  
12 spatial across a watershed, it does not seem appropriate  
13 to pool the data for such analysis.

14           Additionally, Campbell requests the staff to  
15 consider whether it is appropriate to pool historic data  
16 from the mid to late 1990's in order to characterize  
17 today's in-stream conditions. Since 1999 there has been a  
18 change in the ownership on the property. There have been  
19 increased regulations to regulate and require a greater  
20 level of canopy retention along water courses and most  
21 importantly simplistic at it might be, trees grow every  
22 day and the watersheds in question are continuing to  
23 recover from historic practices.

24           We will be providing additional data and we want  
25 to thank you for the additional time till January 17th to

1 submit additional comment. We would like to submit some  
2 comment and data analysis on Pudding Creek that I think  
3 will shed some light on some of the concerns I've raised  
4 today.

5           We would like to commend the staff because they  
6 have at least drilled down into some of the data that  
7 we've provided and tried to determine whether tributaries  
8 may be separated from their main stem reaches. And  
9 therefore, we would like to support not listing of the  
10 10-mile river tributaries along with -- for temperature,  
11 along with supporting the non-listing of Big Salmon Creek  
12 for sediment and temperature, Usal, Wages and DeHaven  
13 Creeks for temperature.

14           We do not support the listing of Pudding Creek,  
15 and we will provide additional information why we do not  
16 feel that is appropriate. And also we would suggest that  
17 we do not support listing for the tributaries for Noyo  
18 River that include Hayshed Gulch, Kass Creek and the  
19 Little North Fork Noyo River.

20           Thank you for the opportunity to provide some  
21 comment and please call us if you have any questions.  
22 We're going to submit this report one more time. I hope  
23 the staff would look at this and try to evaluate the use  
24 of these temperature thresholds, because they bear -- have  
25 a large bearing on whether, you know, these exceedances

1 are valid or not.

2 Thank you very much.

3 ENVIRONMENTAL SPECIALIST WILSON: Ms. Doduc.

4 CHAIRPERSON DODUC: Thank you, Mr. Ribar.

5 ENVIRONMENTAL SPECIALIST WILSON: Question. When  
6 you submit your comments, could you do an analysis with  
7 the unpooled data, are you going to provide that for us?

8 MR. RIBAR: We were going to attempt to do  
9 that -- we were going to -- now, that we have the time, we  
10 will do that for you, because we didn't have time. We  
11 were just trying to throw the stuff around the office  
12 yesterday. And we came up with that, and it just looked  
13 like that was a relevant factor.

14 ENVIRONMENTAL SPECIALIST WILSON: Thank you.

15 CHAIRPERSON DODUC: The final speaker who wants  
16 to speak solely on this Region 1 is Ms. Cynthia Elkins

17 MS. ELKINS: Good morning, Madam Chairman and  
18 Members of this State Board. My name is Cynthia Elkins.  
19 I work with an organization called the Center For  
20 Biological Diversity. And the Center is a national  
21 organization that is dedicated to the protection of native  
22 species and their habitat. We currently have about 15,000  
23 members including thousands of members in California that  
24 rely on the beneficial uses of these watersheds.

25 I'd like to keep my comments very brief and just

1 like to mention that we will be submitting our comments in  
2 writing. We're working with scientists and other experts  
3 right now to complete those. And we'll also submit  
4 supporting documentation and evidence to support our  
5 comments.

6 As you are probably well aware currently about 85  
7 percent of the streams in the north coast are listed as  
8 impaired due to sediment and/or temperature impacts. In  
9 all of these cases logging on private land is named as the  
10 primary source of these problems.

11 Also, as you're aware, your staff has recommended  
12 adding one additional waterbody for these pollutants and  
13 that being the lower portion of the Klamath River. As Dr.  
14 Nelson's photographs and presentations showed, clearly  
15 showed the Klamath is suffering tremendously. And we  
16 strongly encourage the Board to take its staff's  
17 recommendation and add the Klamath River and begin taking  
18 the road towards recovering this severely degraded  
19 watershed.

20 Unfortunately, we also believe that 2 additional  
21 watersheds on the north coast are degraded for one or both  
22 of these pollutants. And we're also urging the State  
23 Board to include these in the revised 303(d) list.

24 Specifically, we're requesting that Salmon Creek  
25 which is a tributary to Humboldt Bay be listed for

1 sediment. And the Bear River, which flows into the  
2 Pacific Ocean just north of the Mattole be listed for both  
3 temperature and sediment pollution.

4 Both of these watersheds are predominantly  
5 managed and owned by industrial logging companies. And  
6 like other watersheds that are listed on the north coast,  
7 have been significantly logged with intensive even-age  
8 management, meaning clear-cutting or other similar  
9 methods.

10 While a lot of the damage that we're seeing is  
11 caused from historical logging impacts, huge portions,  
12 vast acreages of these watersheds have been logged within  
13 the last 10 years. And like other watersheds, these are  
14 underlain by extremely sensitive geology including Yager  
15 formations Wildcat formations and other geological makeups  
16 that make them just extremely sensitive. So this has left  
17 these watersheds like others tattered and they have many,  
18 many bleeding sores and bleeding sources of sediment into  
19 those streams.

20 In Bear River temperatures have been measured in  
21 the summer well above the maximum threshold for -- the  
22 maximum threshold temperatures for Coho and Chinook  
23 Salmon. They've been measured at 76 degrees. And Coho  
24 actually are completely extirpated from Bear River right  
25 now.

1 I'd like to just mention in response to Mr.  
2 Ribar, Coho and other cold water salmonids are just that,  
3 they're cold water adapted and they cannot live in bath  
4 tubs. Mr. Ribar complained about Ms. Sullivan's paper and  
5 the fact that it was not peer reviewed. And I'd just like  
6 to point out that Ms. Sullivan's paper -- Dr. Sullivan's  
7 paper was simply a summary of review -- or excuse me of  
8 published literature. And all of the literature that she  
9 reviews was indeed peer reviewed.

10 Like I said, just to repeat, Coho have been  
11 completely wiped out of Bear River and Chinook are just  
12 barely hanging on in the watersheds. Steelhead are doing  
13 a little bit better, but just by a notch.

14 Also, similarly Salmon Creek, unlike its name,  
15 you really can -- you're hard pressed to go there and find  
16 Salmon these days. The water is extremely turbid and the  
17 problems in both of these watersheds are growing by the  
18 day.

19 Secondly, I'd like to address Humboldt Bay. And  
20 I'd like to mention that the Center wholeheartedly  
21 supports and commends the Board for the recommendations to  
22 add several water bodies for exotic species including  
23 portions of the San Joaquin, Bodega Bay and the Delta  
24 waterways.

25 We would also like to encourage the Board to

1 include Humboldt Bay on the list of impaired waterbodies  
2 for exotic species. Humboldt Bay is the second largest  
3 estuary in California and is considered to be one of the  
4 most biologically diverse on the entire west coast. Its  
5 wetlands and inner-tidal mudflats and marshes provide  
6 essential habitat for an impressive number of native  
7 species, including 141 invertebrate species, 110 fish  
8 species and 251 bird species.

9           But unfortunately it's also now home to a growing  
10 and increasing number of exotic species. There was a  
11 comprehensive survey undertaken earlier in, I believe,  
12 2000 to 2002 that documented 95 exotic species in Humboldt  
13 Bay. Of these 65 are confirmed to be invasive and  
14 currently occupying the bay. There are 30 additional ones  
15 that are probably introduced and/or cryptogenic.

16           These problems like the ones in Bear River and  
17 Salmon Creek are threatening to only grow worse. So we  
18 strongly encourage the Board to act on this and prevent  
19 the kind of problems that we're seeing in San Francisco  
20 Bay. I think we're well on our way to seeing that in  
21 Humboldt Bay and we certainly don't want to get there.

22           Now, Humboldt Bay, unfortunately is home to  
23 species like the Green Crab, which I'm sure you know has  
24 just wreaked absolute havoc. So we'd like to get a handle  
25 on the situation before it grows any worse, and certainly

1 encourage the Board to take that action.

2           So, like I said, we will be submitting our  
3 comments in writing and submitting supporting  
4 documentation for our things.

5           Thank you.

6           CHAIRPERSON DODUC: Thank you Ms. Elkins.

7           I have cards, again, from Ms. Sheehan and Mr.  
8 Peter Kozelka of the U.S. EPA on all the regions. Is it  
9 all right if I just wait until the end to get to the 2 of  
10 you?

11           MS. SHEEHAN: Either way is fine.

12           CHAIRPERSON DODUC: All right. Let's do that. I  
13 think that wraps up all the cards for Region 1. Mr.  
14 Gwynne, as the regional water board representative do you  
15 have anything you'd like to add at this point?

16           You don't have to I just thought I'd offer you  
17 the opportunity.

18           MR. GWYNNE: There was the question on the report  
19 that was cited, Wickham Rawson Report, and whether it was  
20 in the record. It has been submitted again, but when I  
21 was told that the way I could review the records that this  
22 report was based on, the only way I could do that was to  
23 come down here and make copies. And I understand that's  
24 the same approach that all other members of the public  
25 have been given, and I would strongly encourage you to

1 follow up on the request to have this information scanned  
2 and posted for a more conservative approach to the traffic  
3 that we face coming over here.

4           And I would point out that in the staff record  
5 that I was presented to copy the Wickham report is there.  
6 It is very conclusive, very detailed and very lengthy, but  
7 it was not cited in the recommendations clearly as a  
8 source of evidence of impairment.

9           CHAIRPERSON DODUC: Thank you. Mr. Johns, as the  
10 only person here today who supported the delisting of  
11 Laguna de Santa Rosa for nutrients and phosphorus, I'm  
12 curious if you have anything to add upon hearing all the  
13 comments otherwise.

14           MR. JOHNS: Well, I very much appreciate the  
15 opportunity to come up and try to respond a little bit.  
16 It might save me a trip to Pasadena.

17           The City does not dispute that there's a nutrient  
18 problem in the Laguna de Santa Rosa. What we've disputed  
19 or what we argue is that it's not clear based on the  
20 information that it's a nitrogen or phosphorus problem.  
21 And therefore, unless we know exactly what that limiting  
22 agent or pollutant is, it doesn't make sense to make this  
23 listing at this time, and that's effectively what your  
24 staff has concluded twice now, 2 separate times, the last  
25 listing cycle and now again.

1           The only reason that EPA on its review over  
2 turned this listing -- and I suspect Mr. Kozelka might  
3 have some more information on this when he speaks on the  
4 global listings for the northern California reaches --  
5 they cited a number of reasons in a letter to your  
6 executive director as to why they disagreed with the staff  
7 and your board's decision a couple of years ago citing a  
8 San Diego Regional Board Basin Plan decision, as well as  
9 referencing the Malibu Creek watershed TMDL for nitrogen  
10 as well.

11           And the fact is that neither of those references  
12 are applicable to the Laguna de Santa Rosa. They're  
13 different waters. They're different conditions. They're  
14 site specific. That's the whole purpose of TMDLs that is  
15 to come up with water-specific plans to address specific  
16 issues as we know them.

17           It's not, I don't think, completely fair to say  
18 that it's all you have to do is look at the Laguna de  
19 Santa Rosa and see that there is a nitrogen and phosphorus  
20 problem. We know that there are loadings of these  
21 constituents, but we don't know that either of them are  
22 specifically causing the problems that are being cited.

23           One thing that I think is important to note is  
24 that in EPA's own Malibu Creek TMDL a couple of years ago,  
25 2003 -- they were the authors of that TMDL by the way --

1 they said that the predictive power in explaining the  
2 patterns of algal abundance or biomass within Malibu  
3 Creek watershed simply cannot -- excuse me, as there are  
4 uncertainty as to what factors control algal abundance in  
5 the Malibu Creek watershed, uncertainty also exists here  
6 to figure out what's controlling or causing *Ludwigia* in  
7 the Laguna.

8           The City supports more studies of the *Ludwigia*  
9 problem there. And I think Mr. Levine stated to you that  
10 there's already a nitrogen TMDL. And to my knowledge,  
11 that is not true. In fact, there is a nutrient TMDL.

12           The City has proposed actual supporting  
13 financially further studies to find out what the actual  
14 limiting agent is. And I believe that the City would  
15 stand by those past offers of financial support to do  
16 that, combining with what I heard earlier today from the  
17 folks from the Northern California River Watch of \$250,000  
18 contribution to the regional board to identify this  
19 problem, I think that we can before the next listing cycle  
20 presumably find out exactly what the limiting agent is and  
21 come up with appropriate plan, whether it's to list if it  
22 it's determined that it's nitrogen or phosphorus or not to  
23 because it's something else.

24           What is, I think, often lost in these  
25 discussions, it's easy to say we should go ahead and list,

1 and then during the TMDL figure out what the limiting  
2 constituent or pollutant is, but there are real world  
3 implications to folks that have permits during that time.  
4 They impact the actual permit limits that they're given.  
5 And so if, for example, the City were to be given an NPDES  
6 permit limit associated with phosphorus because of this  
7 listing and then begins to take steps to either construct  
8 new treatment facilities or do something to address that,  
9 only to find out down the road, say 2, 3 years, whatever  
10 it might be, that, in fact, it wasn't phosphorus, it was  
11 something else, it's hard to explain to the citizens and  
12 the rate payers of the region, why they're forced to pay  
13 for something that in fact wasn't necessary.

14           And all we are asking by supporting the staff's  
15 recommendation is to let the process go through, figure  
16 out exactly what the limiting constituents is and then if  
17 it's appropriate to list that in the next cycle we'll do  
18 so. Or I should say I'm sure the staff will recommend to  
19 the State Water Board that they do so.

20           So that would be my response.

21           CHAIRPERSON DODUC: Thank you Mr. Johns.

22           MR. JOHNS: Thank you very much.

23           CHAIRPERSON DODUC: Actually, with that, I am  
24 going to ask Mr. Kozelka from EPA if he has any comments  
25 on this particular issue.

1 MR. KOZELKA: Madam Chair. Talk about jumping in  
2 the middle of things here.

3 CHAIRPERSON DODUC: I like to keep things  
4 exciting.

5 MR. KOZELKA: Yes, I understand.

6 CHAIRPERSON DODUC: Please identify yourself for  
7 the audience and the court reporter.

8 MR. KOZELKA: Sorry. Peter Kozelka, EPA  
9 representative from the water division Region 9. We do  
10 have concerns about the lack of interpretation of the  
11 narrative biostimulatory water quality objectives. We  
12 recognize it's difficult to interpret the narrative  
13 standards, but it is being done in other states and it is  
14 being done by other regions.

15 And we believe that although it is difficult to  
16 find the precisely correct nutrient thresholds, it is  
17 possible to ID waters where nutrient levels are so far  
18 above a reasonable range of nutrients that it supports  
19 listings.

20 So, in general, we disagree with the current  
21 draft decision, which says do not list for nitrogen and  
22 phosphorus. In our letter, we would recommend that the  
23 State take on and examine specific nutrient values that  
24 are being proposed or currently exist. Mr. Johns cited  
25 San Diego because they actually have numeric criteria, as

1 in hard numbers.

2           There are some draft nutrient criteria for  
3 regions for this State that are being developed. Those  
4 could be used. There are some EPA criteria. There's also  
5 the possibility of using other existing TMDL targets that  
6 have been used for nitrogen and phosphorus. And so those  
7 range of options should be used. And yes we recognize  
8 that each waterbody is unique and that nutrients are  
9 particularly difficult, but at the same time you have to  
10 apply narrative as well as numeric in order to make  
11 assessment decisions.

12           Anything else?

13           CHAIRPERSON DODUC: Thank you.

14           All right. With that we will move on to the San  
15 Francisco Bay Regional Water Board area. And I have just  
16 one comment card from Ms. Sejal Choksi.

17           MS. CHOKSI: Chairman Doduc, I actually wanted to  
18 see if Jim Curland could go first. He is going to be  
19 speaking on Region 3, but he has to leave.

20           CHAIRPERSON DODUC: With request, we'll move to  
21 Region 3. Mr. Jim Curland.

22           MR. CURLAND: Thank you, Madam Chair. My name is  
23 Jim Curland, and I'm the marine program associate with  
24 Defenders of Wildlife, a national conservation group with  
25 offices in 12 states including our headquarters office in

1 Washington D.C. and 2 offices in California, one here in  
2 Sacramento, and then my marine office in the Monterey Bay  
3 area.

4           And the comments that I'm going to be presenting  
5 today are more overarching. And I defer and we fully  
6 support the comments that Linda Sheehan will be giving on  
7 more broader issues regarding the 303(d) listings And  
8 delistings.

9           But I just wanted to state a few points regarding  
10 the central coast area. I don't have any specific  
11 comments on specific waterbodies. But at previous State  
12 Board hearings and regional board hearings we've made the  
13 comments about the SWAMP program, that it's clearly  
14 underfunded, and we believe it leads to a severe lack of  
15 monitoring data that is preventing clearly impaired waters  
16 from being listed.

17           Where our focus comes into play is whether regard  
18 to the Sea Otter and the Sea Otter is a marine sentinel  
19 species for marine ecosystem health. We recently  
20 completed our annual Sea Otter research meetings that are  
21 hosted or co-hosted by Department of Fish and Game's  
22 Marine Wildlife Veterinary Care and Research Center, USGS,  
23 U.S. Fish and Wildlife Service and the Monterey Bay  
24 Aquarium.

25           And as these meetings happen every year and other

1 meetings, more evidence comes in to play about the  
2 land/sea connection with regard to a high rate of Sea  
3 Otter disease. And, in fact, I don't know if many folks  
4 know this, but Sea Otters more than any wildlife species  
5 have the highest rate of disease, and many of these  
6 diseases are from land-based origins.

7           What we're seeing is biological pathogens. We're  
8 seeing a higher rate of domoic acid, which some believe  
9 might have ties to nutrient loading. And that also the  
10 feeling that there's a tie to human health, because what  
11 Sea Otters eat, obviously, is a lot of what the seafood  
12 consuming public eats. And if Sea Otters are picking up  
13 these diseases from the variety of prey that they eat, we  
14 eat the same thing. So there's a human health issue as  
15 well.

16           One of the things that we might recommend, you  
17 know, and I know this process is winding down in  
18 mid-January, but that the Water Board invites Dr. Dave  
19 Jessop who's with the Marine Wildlife Veterinary Care and  
20 Research Center to do a presentation about the land/sea  
21 connection and how we're seeing more and more contaminants  
22 coming into the near-shore waters from various water  
23 bodies.

24           And I guess we'd like to finish off with just a  
25 few, again, overarching points that we believe that the

1 lack of standards for listings, the State has no standards  
2 for nitrates to protect aquatic life. We believe that the  
3 interpretation of the narrative standards where there are  
4 only narrative standards, there are a number of instances  
5 where the State uses evaluation guidelines that result in  
6 the waters not being listed for a particular pollutant.  
7 And we believe again, tying back to the Sea Otter, that  
8 these guidelines must err on the side of caution. We're  
9 just having too many Sea Otters die of disease. And that  
10 new listings are being passed on due to the wrong  
11 standards being used, for example, for nitrates.

12           So I guess the final comment I'd like to make is  
13 that, you know, we've had various legislative hearings.  
14 There was even a hearing before Congress on this whole  
15 issue of marine species as sentinels for ecosystem health,  
16 and we're just seeing more and more from with the Sea  
17 Otters dying of disease is telling us is that there's  
18 contaminants getting into the ocean through various  
19 waterbodies that are getting there and resulting in this  
20 high disease, and that we really need to crack down on  
21 listing various waterbodies that may be aren't being  
22 listed or the standards aren't being used adequately.

23           So thank you very much.

24           CHAIRPERSON DODUC: Thank you, Mr. Curland.

25           Now, we're back to Ms. Choksi. And that is the

1 remaining card that I have for all the other regions  
2 except Region 5. I have 10 cards for Region 5. So what  
3 we'll do is after you speak, we'll take a short break for  
4 the court reporter, and then return to listen to Region 5.

5 MS. CHOKSI: Good morning, Chairman Doduc. Sejal  
6 Choksi San Francisco Baykeeper. Thank you for allowing  
7 Jim to go first and thank you for this opportunity to  
8 comment.

9 I'm still reviewing the San Francisco Bay  
10 documents. There's a lot of stuff, a lot of draft  
11 documents. And I plan to have more complete comments  
12 before the 17th. But in briefly glancing at everything, I  
13 just wanted to raise 4 points on Region 2.

14 First, there's some waters that are listed on the  
15 do-no-list category, and there are water quality  
16 exceedances, and the staff admits that there are. But  
17 they say that they're not going to list them because  
18 there's another program that's already addressing that  
19 pollutant.

20 An example of this is in Region 2, the failure to  
21 list Payton Slough for Cadmium, Copper, Chlordane, Silver  
22 and Zinc. And this violates the listing guidance, because  
23 impaired waterways should be on the list until they're  
24 cleaned up. So we request that staff double check these  
25 waterways and keep them on the list until they are

1 addressed.

2           Second, in addition to this one mistake that we  
3 found, there are at least 3 instances that I've seen so  
4 far where existing and available data was not gathered or  
5 evaluated, and that violates EPA regulations 40 CFR 130.7.  
6 One example of this includes a failure to list San  
7 Francisco Bay, San Pablo Bay, and Suisun Bay for PBDEs, a  
8 toxic flame retardant.

9           Staff rejected listing these waters for PBDEs by  
10 saying that there were only 2 studies in the  
11 administrative record, and that these studies were  
12 anecdotal reports and not specific. But there were  
13 referenced quite a few more studies and these include 3  
14 studies by She done in 2002, Holden in 2003 and North in  
15 2004. And all of these studies identified PBDEs in bay  
16 harbor seals, fish and local wastewater effluent. So  
17 these studies were available and we believe they should be  
18 taken into account.

19           State Board staff also rejected listing for PBDEs  
20 by saying that since fish are mobile, the linkage analysis  
21 was weak and it would be stronger if tissue was looked at  
22 from filter feeding organisms. While there was actually a  
23 2004 study and presumably the data was collected before  
24 2004 and then the study was compiled in 2004, and that  
25 showed that clams, which are filter-feeding organisms, had

1 high levels of PBDEs and that, in fact, the 2002 levels  
2 were higher than 2001 levels. So there was data since at  
3 least 2001 on clams.

4 So this study, the 2004 SFBI study concluded by  
5 implying that there's not actually a lack of data  
6 regarding the impairment. There is a lack of data  
7 regarding the sources and pathways of PBDEs. And that  
8 strikes me as something that a TMDL needs to address.

9 So Baykeeper believes that the weight of the  
10 evidence supports listing for PBDEs in these waterbodies.  
11 And we don't think that we should have to wait until 2008  
12 to complete -- to have a TMDL, because we could be then  
13 looking at a lot of delay for a pollutant that's present  
14 right now in our waters.

15 The other 2 instances where we don't believe the  
16 science was properly or adequately collected was in Bay  
17 Area urban creeks and trash. The San Francisco Bay  
18 Regional Board undertook a rapid trash assessment from  
19 2003 to 2005. And in 26 sites they did 85 surveys. And  
20 the study concluded that trash is alarmingly high in Bay  
21 Area creeks even during dry weather conditions.

22 So this data was available and we believe it  
23 warrants a listing of the creeks if not for the Bay,  
24 because presumably all the trash is then going into the  
25 Bay, but I don't think that there's enough data on that

1 point yet.

2           And finally, Baykeeper would also appreciate it  
3 if staff could take a look at some of the other evidence  
4 on pesticides that seems to have been available at the  
5 time, because researchers recently at UC Berkeley found  
6 widespread toxicity in urban creeks. And this was  
7 pyrethroid pesticide toxicity in Kirker Creek specifically  
8 in a Contra Costa County.

9           And Baykeeper believes these findings were timely  
10 and may warrant a listing of some of the Bay Area creeks  
11 for pyrethroids. So it's clear that staff put a lot of  
12 time and effort into this proposal and we thank them for  
13 doing that, and I look forward to working with your staff  
14 to fix these few problems that I've noticed so far and  
15 hopefully there aren't too many more. Thank you.

16           CHAIRPERSON DODUC: Thank you.

17           With that, we'll take a 15-minute break and  
18 resume at 12:10, let's just make it.

19           (Thereupon a recess was taken.)

20           CHAIRPERSON DODUC: We are ready to resume.

21           And at this time, before we get to Region 5, we  
22 have 2 speakers who would just like to provide general  
23 statements, starting with Ms. Linda Sheehan.

24           MS. SHEEHAN: Thank you, Madam Chair and staff.  
25 My name is Linda Sheehan. I'm the executive director of

1 the California Coast Keeper Alliance. We represent  
2 individual water keeper groups from the Klamath River down  
3 to San Diego on statewide issues of importance such as  
4 impaired waters listings.

5           This is, I would remind everybody, and the people  
6 know this, but it is the first application of the State's  
7 new listing guidance, so the discussions we're having here  
8 today are very important, will have precedential value,  
9 and I think people, including the staff, are taking the  
10 guidance so seriously and doing such a lot of work in  
11 trying to prepare all the fact sheets and be thorough.

12           I would also like to support the listing of  
13 various waterbodies for invasive species. I think that's  
14 extremely important and it will help us get a handle on  
15 that issue.

16           Add I also welcome the inclusion of waterbodies  
17 that had formally been taken off as TMDLs completed. This  
18 TMDLs completed list that was separate from the impaired  
19 waters list, taking that and putting it within the  
20 impaired waters list. That is extremely important.

21           As Sejal Choksi mentioned earlier, some of the  
22 waters that are supposed to be -- have put back on the  
23 list, may be didn't get put back on, so there might have  
24 been a couple of errors in that regard. And we'll be  
25 checking it over and you know hopefully would make sure

1 that everything is all set, but the staff report was  
2 pretty clear that they're going to be on the impaired  
3 waters list and we do support that.

4 I wanted to raise just a couple of concerns that  
5 are specific with respect to legal issues with the  
6 listing, and then a couple of broader issues that are  
7 overarching and will be part of our comment letter as we  
8 prepare it on January 17th.

9 A lot of these have been touched on. One would  
10 be interpretation of narrative standards. And there seems  
11 to have been a tendency to assume in the document that you  
12 have to have a number, to the extent that if there's no  
13 number, then a lot of waterbodies might be delisted. And,  
14 in fact, as Mr. Kozelka said according to the law and the  
15 regulations that 130.7 as well as Section 3.11 of the  
16 listing guidance, which is the weight of evidence section,  
17 you are and can and should and must list waters that are  
18 impaired, whether or not they have a number associated  
19 with them. The narrative standard interpretation can  
20 sometimes be difficult, but it can and should be done.

21 And then second, another concern with  
22 implementation of the regulations in 130.7 is the outreach  
23 and collection of readily available data, and that was  
24 something that Mr. Choksi alluded to in her testimony,  
25 just making sure that waters are listed based on all

1 readily available data. And that's another issue that  
2 we're going to be looking more into and making sure that  
3 we've got all the waterbodies that should be on the list  
4 on the list.

5           Another issue that was touched on by Ms. Adelman  
6 earlier is with respect to Section 6.2 of the listing  
7 guidance, and that's with respect to regional water board  
8 public hearings on the list. And I'm a little bit  
9 confused as to why that didn't occur, because the guidance  
10 document is pretty clear that in 2004 the State Water  
11 Board was going to do the list. That's in Section 6.3.  
12 And then after 2004 Section 6.2 would kick in and then  
13 individual regional water boards would review the list,  
14 have local hearings, so that people wouldn't have to truck  
15 in from all over the State, staff would be able to -- and  
16 would be required to issue written comments in response to  
17 the comments that were raised at the hearings.

18           And the regions would write resolutions that they  
19 would transmit with their list up to the State Water  
20 Board, which would have been extremely helpful to, you  
21 know, us scrambling trying to read through pages of  
22 documents trying to understand where the regional water  
23 board staff come out, where the Board Members come out,  
24 where we come out. And so I'm a little uncertain as to  
25 why apparently that didn't happen. And, as you can see

1 today, at least one regional water board is objecting to  
2 the list. And that would have been helpful to have that  
3 in a resolution and a document that would summarize by  
4 region that information and allow local people to be able  
5 to attend local hearings.

6           So perhaps that could be addressed by having, you  
7 know -- giving regions the opportunity to let people speak  
8 or to comment, provide additional comments. I'm sure they  
9 will be doing that, but perhaps additional outreach could  
10 be taken in order to make sure that Section 6.2 of the  
11 listing guidance is addressed completely, because public  
12 outreach, including to staff and the Water Board Members  
13 is extremely important in making sure that we're doing as  
14 good a job as we can on this first application of the  
15 listing guidance.

16           I just wanted to raise just 2 or 3 other points  
17 with respect to the list. And, again, we're going to be  
18 addressing these in more detail later. They're mostly  
19 overarching points.

20           One is the lack of standards that are preventing  
21 some waterbodies that are clearly impaired from being  
22 listed. And I can cite 1 or 2 examples of that. No  
23 standards for nitrates for aquatic life. So apparently  
24 the drinking water standard has been picked instead, which  
25 is not stringent enough. And the lack of standards for

1 sediments, of course, is causing a problem. Some of the  
2 information that I've received for local water keepers and  
3 other local groups is the dioxin in Humboldt Bay, DDT in  
4 the Dominguez Channel are clearly problems. Because of  
5 the lack of sediments, we're having trouble actually  
6 listing the waterbodies. And that may or may not be a  
7 list problem, but again it's something to consider for a  
8 Water Board perspective.

9           There's no clear standards for the size of an  
10 assessment unit, the areas affected. The staff report  
11 says that that piece was addressed, but there still seems  
12 to be quite a bit of variance among the regions in terms  
13 of how big of waterbody is affected by an impairment. And  
14 that does certainly affect the reach and size of the  
15 impaired waterbodies which would impact the list.

16           So some more consistence and information on that  
17 would be helpful as we go forward.

18           And, again, we're still reviewing the data, so  
19 we'll flushing this out more. Another problem is the lack  
20 of formal -- lack of addressing existing beneficial uses  
21 again the staff report does say that they tried to look at  
22 existing beneficial uses within a waterbody, if in fact  
23 there was not a formal beneficial use designated in a  
24 basin plan to see if perhaps kids were swimming,  
25 eventhough it didn't say swimming. And then addressing

1 impairment accordingly.

2           We're not sure that was done everywhere. We'd  
3 support that. We're not sure it was done everywhere. One  
4 person said that the Salinas Reclamation Canal in Region 3  
5 as a possible, but again we're looking into that in more  
6 depth for the 17th.

7           And then finally something that Mr. Curland  
8 touched on is with respect to the lack of monitoring data.  
9 You know clearly SWAMP has been underfunded, and the  
10 funding has been reduced, and I'm sure I'll be up here on  
11 Friday talking about that some more.

12           But there are some waterbodies that should pretty  
13 clearly be listed, based on surrounding impairments and  
14 surrounding historic uses. Salmon Creek was mentioned  
15 earlier for sediments, and Humboldt Bay the historic mill  
16 use in the area clearly points to dioxin as a problem and  
17 possibly pentachlorophenol. And Dominguez channel for a  
18 PCBs and DDTs as well. And I'm sure that that will come  
19 up in the hearing in early January.

20           But again we're seeing, you know, because there  
21 isn't monitoring data in that particular spot, eventhough  
22 the waters are clearly impaired because everything around  
23 it is impaired or there were clearly like 200 mills in the  
24 area, lack of monitoring is preventing that from being  
25 appropriately listed.

1           And that would be another push again for  
2 additional SWAMP monies, but also a closer look as to  
3 whether these particular areas are a problem. And, in  
4 fact, there was a great article in the San Diego Union  
5 Tribune right after the list came out where John Robertus  
6 down in Region 9 said if we had more money to monitor I'm  
7 sure the list would be even longer. And that doesn't  
8 actually make me feel better. I would prefer the list  
9 always get smaller because the waters are clean.

10           And that kind of brings me to sort of the summary  
11 is to just keep in mind that it's very easy to get caught  
12 up in the salinity and DDT and 130.7 and all of the little  
13 nit-picky things that go into this list. But the thing to  
14 remember is we've got 287 more waterbodies listed and we  
15 keep refining the list and looking at everything more  
16 closely and still we add more waterbodies.

17           And so that makes you want to stop and take stock  
18 and say well, what are we as a Water Board not doing  
19 appropriately? Should we be doing more enforcement?  
20 Should we be doing better permits? Should we not be doing  
21 waivers? Should we be doing WDRs instead on polluted  
22 run-off. These are all the things we need to think about  
23 as we finalize the list and not get -- the list is  
24 extremely important. We need to do it right to help us  
25 figure out also, not only how to cleanup those waters, but

1 prevent other waters from being polluted in the future,  
2 and that's really the goal, clean water, that we all  
3 should be looking at.

4 And we'll be outlining these in excruciating  
5 detail on the 17th I'm sure.

6 CHAIRPERSON DODUC: Thank you. A clarifying  
7 question. You said that one regional board is objecting  
8 to the list, the entire list?

9 MS. SHEEHAN: No, no, no. I was just referring  
10 to the staffer from Region 1 today talking about Laguna de  
11 Santa Rosa.

12 CHAIRPERSON DODUC: That one listing.

13 MS. SHEEHAN: Yes, as an example. And I have  
14 also been talking with different environmental groups  
15 around the state who have said that they've been talking  
16 to staff as well, and there have been questions about  
17 different pieces of the list. And, again, we'll try to  
18 flesh those out. But if the public hearings had been  
19 held, then, you know, that might have been more  
20 consolidated for your review.

21 CHAIRPERSON DODUC: Thank you.

22 Mr. Kozelka.

23 MR. KOZELKA: Thank you, Madam Chair.

24 Peter Kozelka from EPA again.

25 I want to first recognize an enormous amount of

1 effort that's been put in by Craig Wilson and his staff to  
2 produce this staff list. It's worth clarifying that EPA  
3 actually assisted in the data compilation and the  
4 preliminary analysis, but to stress that all the listing  
5 decisions and recommendations in the actual list were  
6 based upon your staff's decisions alone.

7           It's pretty important for to us stand up here and  
8 say that EPA supports vast majority of the listing  
9 assessments. That is in greater than 95 percent, we  
10 conclude the same decision that your staff has. And we  
11 believe it's critical to complete this process quickly.

12           We support and actually suggested the idea of the  
13 joint 2004 and 2006 list, but is important to not let this  
14 slide past the spring of 2006. In the future, we would  
15 suggest that EPA -- or excuse me that California develop  
16 an integrated report, which combines those 305(b) and the  
17 303(d) lists together, which is also outlaid in our 2004  
18 and 2006 national guidance and to get back on a biennial  
19 schedule per federal regulations.

20           So we will be submitting written comments at the  
21 end of the comment period in the middle of January. Today  
22 I have a few things to highlight with some focus on  
23 northern California waters. Actually, only 2 areas of  
24 concern, 2 areas of support and 2 comments.

25           And you're already heard one of the concerns,

1 that was related to nutrients and decision for the Laguna  
2 de Santa Rosa and I won't repeat that.

3           The concern about conventional pollutants. The  
4 listing policy provides generally a useful framework for  
5 setting a more consistent objective basis for decisions.  
6 In the past, EPA has expressed significant concerns about  
7 several aspects of the final policy, most notably that  
8 certain aspects may not be consistent with applicable  
9 water quality standards, which what the assessments are  
10 supposed to be based on.

11           For conventional pollutants, the policy utilizes  
12 a binomial approach to evaluate waterbody conditions for  
13 parameters such as DO, pH, TSS. The DO standard is  
14 actually a numeric standard and most regional board basin  
15 plans have descriptions that include some allowable  
16 exceedances based upon a 90th percentile or an 85th  
17 percentile depending upon each specific basin plan. And  
18 this corresponds to a 10 or 15 percent allowable  
19 exceedance rate respectively.

20           As far as I can tell the policy's criteria says  
21 that you have to have greater than 25 percent exceedances  
22 in order to call it impaired. We don't see how 25 is  
23 warranted and we wouldn't support that. We would support  
24 the idea of applying 10 percent, because that's what's  
25 consistent with the standards.

1           An example of this is Chumash Creek in Region  
2 Board 3, which is impaired by greater than 10 percent for  
3 DO, but it is not on the draft list.

4           Whereas the policy is designed to make more  
5 consistent application across the state, we would hope it  
6 would be also consistent with existing standards.

7           Two things in support. We support the invasives  
8 or exotic species listings. This signals State  
9 recognition of this real contributing cause of beneficial  
10 use impairment in some important State waters. You may  
11 hear that some commenters will suggest that listing for  
12 invasives will set precedents and potentially lead to  
13 impaired listings anytime invasives are observed.

14           However, we believe that assessments for  
15 invasives and exotics can be performed and listed in ways  
16 that do not represent sweeping policy statements and also  
17 can be supported under the Clean Water Act or  
18 Porter-Cologne. The key here is evidence of impact on  
19 beneficial uses and to warrant an ID species of concern.

20           We support central valley listings for  
21 temperature and there may need to be a few more. This is  
22 another situation where existing water quality objectives  
23 are awkwardly stated and difficult to interpret, but it is  
24 being done in other states and it is being done in Region  
25 1. We commend the State Board staff for evaluating

1 substantial data indicating several essential valley  
2 waters are at very elevated temperature levels. EPA  
3 provided some technical guidance to help make those more  
4 transparent and consistent with scientific studies for  
5 fish survival.

6           However, we have one waterbody which is not in  
7 the central valley but in the north coast that believes  
8 continued listing of the Lower Lost River for temperature  
9 is unwarranted. We did not intend this particular  
10 waterbody to be included in our regional decision in 1992  
11 to list the Klamath River and the Lost River. So that's  
12 specifically the Lower Lost River not for temperature.

13           Two general comments. The policy provides in the  
14 final analysis for the application of a weight-of-evidence  
15 approach through which the State can decide to list waters  
16 which do not meet an individual listing test elsewhere in  
17 the policy or vice versa could delist.

18           We are concerned that this weight-of-evidence  
19 approach has not been applied in many cases. And it may  
20 have led to listing recommendations that are at odds with  
21 water quality standards in the compiled data and  
22 information.

23           Another comment. New Data. We fully understand  
24 the concern about being overwhelmed by new data  
25 submissions, but we believe the State is compelled to

1 consider this on a case-by-case basis. That is, we hope  
2 State Board doesn't categorically rule out evaluating  
3 newer data submittals. We have no preconceived ideas of  
4 specific data sets that must be considered, rather EPA is  
5 willing to work with your staff to develop criteria to  
6 sport through data submittals that may come in during the  
7 public comment period with 1 goals in mind. One is to  
8 reduce staff workloads, and 2 is to get a finalized list  
9 by April 1st, 2006 to be consistent with federal  
10 regulations.

11 In summary, there's much support for the draft  
12 list by and large this is a much better draft list  
13 compared to ones in the past. One measure of this is that  
14 we have identified only a few dozen waterbody common areas  
15 where we currently disagree. I don't have a lot of  
16 history, but I can say a few dozen is pretty small  
17 compared to what it has been in the past.

18 We will carefully evaluate the final submittal,  
19 and if necessary add waterbody pollutant combos prior to  
20 issuing a final approval. This will also include a public  
21 comment period.

22 We appreciate the opportunity to comment today  
23 and we also comment at the Pasadena hearing for southern  
24 California specific issues, but those are not many  
25 concerns.

1 Thank you.

2 CHAIRPERSON DODUC: Thank you. We look forward  
3 to receiving your comments.

4 Any questions?

5 All right. With that, we'll now turn to comments  
6 with respect to the Central Valley region. We have a  
7 representative from the regional Board, Mr. Joe Karkoski.

8 (Thereupon an overhead presentation was  
9 Presented as follows.)

10 CHAIRPERSON DODUC: Since I see people leaving, I  
11 want to take a moment and thank you for coming here from  
12 the north coast area. We appreciate it.

13 MR. KARKOSKI: Good afternoon. My name is Joe  
14 Karkoski. And I'm a Senior Water Resources Control  
15 Engineer from the Central Valley Regional Board.

16 We will be submitting detailed comments to the  
17 State Board, but I would like to highlight a number of  
18 significant policy issues that staff have identified.

19 First, we have appreciated the earlier  
20 opportunities provided by State Board staff for regional  
21 board review of the fact sheets. Many positive changes  
22 have been made in response to our previous comments.  
23 However, there are a few critical issues that we still  
24 believe need to be addressed.

25 --o0o--

1 MR. KARKOSKI: So I'm providing the comments that  
2 Peter said you may hear later.

3 I'll focus my comments on the proposed exotic  
4 species and temperature listings and touch on a few other  
5 listing issues.

6 --o0o--

7 MR. KARKOSKI: There are a number of legal,  
8 technical and policy problems with the exotic species  
9 listings for the Delta, San Joaquin River and Cosumnes  
10 River. Before I touch on those problems, I want to lay  
11 the foundation for our comments.

12 First, in reviewing the fact sheets and the  
13 references upon which the listings are based, there are  
14 consistent references to non-native species. Since there  
15 is no other definition of exotic species, we assume that  
16 all non-native species are exotic. Non-native species  
17 include species that this Board and the U.S. EPA are  
18 trying to protect, such as stripe bass, species that  
19 routinely are consumed by sport fisherman and subsistence  
20 fisherman such as catfish, and species used for biological  
21 control of mosquito, mosquitofish.

22 --o0o--

23 MR. KARKOSKI: In our discussions with staff, it  
24 appears that the listings are being proposed based on the  
25 suggestions of U.S. EPA and a recent federal court ruling.

1 That ruling concluded that NPDES permits were required for  
2 the discharge of ballast water. This ruling was partially  
3 based on a determination that ballast water often contains  
4 invasive species and those invasive species are  
5 pollutants. We believe that this ruling is  
6 inappropriately being extended to established non-native  
7 species where there is no discharge of waste.

8 --o0o--

9 MR. KARKOSKI: We have also reviewed the  
10 references that form the basis for the listing  
11 recommendations. For the San Joaquin River, the reference  
12 clearly indicates changes in flow and hydro modification  
13 are the cause of the decline in native species.

14 The altered flow regime has favored non-native  
15 fish species. But the non-native fish have not caused the  
16 natives to decline. The reference used for the Cosumnes  
17 River provides the only compelling evidence that a  
18 non-native introduced species, the redeye bass, has caused  
19 the decline of native species. The particular species  
20 rather than a general category can be identified.

21 Lastly, the Delta listing is based on a  
22 biological opinion by Fish and Wildlife Service that  
23 identifies a number of potential causes for the Delta  
24 smelt or pelagic fish decline. Although that opinion  
25 mentions both specific invasive species and toxic

1 pollutants as potential contributors, the primary focus of  
2 the opinion is on flow changes including exports.

3 --o0o--

4 MR. KARKOSKI: Prior to making a decision to list  
5 exotic species within the context of the new listing  
6 policy, we would like the Board to consider the following  
7 policy questions. We believe these questions should be  
8 considered since there are potentially significant  
9 unintended consequences to a decision to list exotic  
10 species. If the State Board decides non-native species  
11 are pollutants by placing them on the 303(d) list, are we  
12 then obligated to protect pollutants from pollutants?

13 If non-native species are pollutants, are  
14 regional and State Board programs that protect non-native  
15 species undermined? What regulatory authorities would we  
16 be expected to use to control the propagation of  
17 established non-native species.

18 A Delta listing of exotic species suggests that  
19 the State Board has confirmed a cause or contributor to  
20 the pelagic fish decline. Is such a listing getting ahead  
21 of the multi-million dollar scientific investigations into  
22 the cause of the decline?

23 --o0o--

24 MR. KARKOSKI: We recommend that exotic species  
25 not be listed. The legal and technical foundation is





1 central valley streams that are highly altered compared to  
2 those that are minimally altered, and we would like to  
3 identify whether there are controllable factors that  
4 contribute to any increase in temperature.

5 --o0o--

6 MR. KARKOSKI: To finish up, I want to touch on a  
7 couple other issues. Since it has been awhile since the  
8 compilation of data took place, we will provide more  
9 recent information for a few key fact sheets that  
10 recommend either a listing or delisting.

11 There are a couple of cases in which a general  
12 category is used, for example, sediment toxicity. But the  
13 data identifies the specific toxicants. In those cases,  
14 we believe the specific pollutants should be identified.

15 Lastly, we believe additive toxicity needs to be  
16 considered. In a couple of cases, diazinon and  
17 chlorpyrifos, which exhibit additive toxicity, are  
18 considered separately. We believe their additive effect  
19 must be evaluated.

20 And I also wanted to touch on the concern raised  
21 by a couple of commenters regarding regional board  
22 participation in terms of having a hearing process. I'm  
23 sure you'll hear this from your staff, but to go through a  
24 regional board hearing process, at this point, would  
25 probably delay things another 9 months to a year. I think

1 we would feel obligated to do an independent review of the  
2 data ourselves, if we are going to present recommendations  
3 to our board. And so we may, you know, start anew with  
4 looking at available data and information in making our  
5 own independent recommendations versus just commenting on  
6 what State Board staff has come up with.

7 So that's all the comments I have. I'd be happy  
8 to answer any questions.

9 CHAIRPERSON DODUC: Thank you, Mr. Karkoski.

10 MR. KARKOSKI: Thank you.

11 CHAIRPERSON DODUC: Mr. Tim O'Laughlin.

12 MR. O'LAUGHLIN: I have a hand and of the actual  
13 PowerPoints.

14 (Thereupon an overhead presentation was  
15 Presented as follows.)

16 MR. O'LAUGHLIN: Thank you. Tim O'Laughlin  
17 representing the San Joaquin River Group Authority. I  
18 think we've been together for the last three months  
19 talking about this once every 2 weeks.

20 CHAIRPERSON DODUC: Actually, you haven't  
21 appeared in front of me for 2 weeks. I've been through  
22 withdrawal.

23 MR. O'LAUGHLIN: Oh, I'm sure.

24 (Laughter.)

25 MR. O'LAUGHLIN: Well, it's good to get back

1 together again and talk about one of my favorite subjects.

2 Briefly, the San Joaquin River Group Authority  
3 filed a petition to delist the Lower San Joaquin River for  
4 salinity and boron. I'll wait --

5 CHAIRPERSON DODUC: I'm grabbing the last handout  
6 here.

7 MR. O'LAUGHLIN: -- for salinity and boron in  
8 September of this year. I talked to Mr. Wilson of your  
9 staff. What we have agreed to do, and we sent in a letter  
10 to the State Water Resources Control Board, was that  
11 rather than to proceed with our petition to delist at this  
12 time, that we would proceed forward under your revised  
13 303(d) listing at this time and make our comments and  
14 suggestions in this hearing process.

15 --o0o--

16 MR. O'LAUGHLIN: The San Joaquin River pursuant  
17 to the 303(d) list for impaired bodies was added on  
18 January 29th, 1996. In our previous discussions, and  
19 you'll see this in our submittal that we made previously  
20 to you, the salinity and boron was not on the original  
21 staff lists put forth by the Central Valley Regional Water  
22 Quality Control Board staff and recommended to the  
23 regional board, nor was it on the add-on sheets or the  
24 revised sheets that were presented to the regional board.

25 In fact, it appears that what happens is that the



1 your staff report and your fact sheet. Water Code section  
2 12230 the technical report on the regulation of  
3 agricultural drainage to the San Joaquin River that was  
4 prepared pursuant to Water Quality Order 85-1, and then  
5 finally the 1995 Bay/Delta Water Quality Control Plan.

6 Starting with the top, and you can read Section  
7 12230 if you'd like for yourself, but under 12230 it's  
8 very interesting. This is going back in time as to the  
9 problems that were associated with Kesterson. And you  
10 will find that in adopting 12230, that the Legislature  
11 found that there was a serious problem of water quality  
12 that existed in the San Joaquin River. They never defined  
13 what the problem was. And the Legislature basically  
14 directed this Board and the regional boards to go out,  
15 find out what that problem was and address the issue.

16 At the time, the major concern was selenium. And  
17 if you look at number 2, which is the technical report on  
18 the regulation of agricultural drainage that was done,  
19 that report addressed the selenium issue that arose from  
20 Kesterson, which ultimately resulted in the Grasslands  
21 Bypass NPDES issuance of a permit for controlling selenium  
22 discharge from the west side.

23 The 1995 Bay/Delta Water Quality Control Plan did  
24 have evidence in the record as to salinity and exceedances  
25 of salinity in the Lower San Joaquin River and that was

1 modeling that was done pursuant to the old stand mod and  
2 DWR's sim modeling. And I'll get to that in a little bit.

3 --o0o--

4 MR. O'LAUGHLIN: We've been through some of these  
5 with you. I won't bore you with the details. They'll be  
6 included in much detail in our original -- in our  
7 submittal that we'll be making in January. But pursuant  
8 to your rules and regulations, the original waterbody for  
9 pollutants shall be removed if the original listing was  
10 due to faulty analysis, faulty data or no data at all.

11 We originally pointed out to you in our submittal  
12 that the data used by the Central Valley Regional Water  
13 Quality Control Board looked at the time period from 1984  
14 through 1994, which included 6 critically dry years,  
15 consecutive critically dry years. That has never occurred  
16 in the hydrologic record in the San Joaquin River either  
17 before or since.

18 Also, when you look at the critically dry years,  
19 there was a total of 19 from 1922 to 1994. And out of the  
20 16, 6 occurred during the time period. Clearly, when you  
21 get to the data, which I'll show you shortly, it's  
22 spatially and statistically skews the data in favor of a  
23 listing.

24 Not only that, the data that must be used to list  
25 has to temporarily and geographically represent the

1 waterbody. And what we've presented in our documents to  
2 you both last year -- I mean, not last year, last  
3 February, last April, last May, September, October,  
4 November and December, is that the data that currently is  
5 on your fact sheet does not represent neither temporarily  
6 or geographically the waterbody that's being discussed.

7           So there's lots -- a lot has changed since 1996  
8 when the original listing was done. Those are not  
9 captured within the State Water Resources Control Board  
10 fact sheets.

11           The second one which is kind of an important one,  
12 we think, is -- and I know people don't like hearing this  
13 because -- but we've actually achieved the objective. The  
14 Vernalis salinity objective and requirement that is set  
15 forth in the 1995 water quality control plan and before  
16 has been met since 1995 is continuing to be met and there  
17 is no expectation in the future that it will not be met.

18           And if that is the case and the water quality  
19 objective is being met, there is no reason for having a  
20 303(d) listing. There is no currently trends in declining  
21 water quality or impacts are no longer being observed.  
22 This is an important one since the Grasslands Bypass  
23 permit was granted under its NPDES permit and other  
24 actions have taken place in the basin B2, FERC flow  
25 requirements, VAMP requirements, San Joaquin River

1 agreement requirements, supplemental flows, ag discharge  
2 requirements.

3           In fact, the trend is to a better water quality  
4 in regards to salinity and boron and not a worse water  
5 quality for salinity and boron.

6           And we don't have to deal -- there's some  
7 confusing stuff about the last one, but I'll leave that  
8 for a different slide at a different date.

9   --o0o--

10           MR. O'LAUGHLIN: We agree with the previous  
11 speakers that I know this is going to be hard for the  
12 State Board staff for the Board Members as well, but our  
13 complaint is that the listing policy requires the  
14 evaluation of all readily available data. And it seems to  
15 us that that has not occurred in this situation.

16           In fact, one of the key points that we made is  
17 that -- and we made this before the Central Valley  
18 Regional Water Quality Control Board when they were  
19 adopting the salinity and boron TMDL -- was that CalSim II  
20 modeling, which is the newest modeling, which shows that  
21 it will not occur -- it's an updated model. It's the  
22 model currently being used by DWR and USBR for planning  
23 not only in the San Joaquin River basin but in the Delta  
24 as well. It shows that there will no longer be violations  
25 of salt and boron at Vernalis. And if violations would

1 occur, they would only occur if the Bureau was strictly  
2 adhering to the interim plan of operations.

3 We put into record that the Bureau does not  
4 strictly adhere to the interim plan of operations. And  
5 since they have a permit condition, we would expect them  
6 to meet their permit condition. So we believe and we will  
7 submit it to this Board and staff again the evidence that  
8 we believe leads to the delisting of the Lower San Joaquin  
9 River.

10 I'm going to skip the next slide, which is kind  
11 of just a more exhaustive -- this is a comment by the  
12 Central Valley Regional Water Quality Control Board.

13 --o0o--

14 --o0o--

15 MR. O'LAUGHLIN: But I think it's important that  
16 even the regional board and the regional board staff  
17 recognizes that there's been extensive changes in the last  
18 10 years in the San Joaquin River in regards to water use,  
19 drainage, flows, simulative capacity. And we believe  
20 that's not represented -- we believe that this comment is  
21 well taken and should be addressed more fully by staff as  
22 they move forward.

23 --o0o--

24 MR. O'LAUGHLIN: Finally, no EC objectives. I  
25 want to spend some time on this one. This is kind of an

1 interesting one.

2           Actually, the Central Valley Regional Water  
3 Quality Control Board when they were conducting the  
4 modeling for the TMDL that this Board recently adopted,  
5 went back -- we went back and said okay, well, let's break  
6 this out by year, and distribution about how the regional  
7 board came up with what they came up with in regards to  
8 the salinity violations at Vernalis.

9           This is based on modeling done under DWR Sim.  
10 It's for the time period 1922 to 1994. And it's broken  
11 down by year type, critical years, dry years, below  
12 normal, above normal, wet, and then we did the totals down  
13 at the bottom.

14           One of the first things I wanted to point out is  
15 that during that time period, which is roughly 72 years,  
16 16 years were critical. Now, remember when the original  
17 listing was done, it was based on 6 years of consecutive  
18 critically dry years occurring from that time period, '84  
19 through '94. So you can see right away how the values get  
20 skewed.

21           And then if you go over, you'll see that that's  
22 192 months. There were actually 38 exceedances during  
23 that time period. And you'll note, and it's not  
24 coincidence, that in critically dry years we have 38  
25 exceedances during the irrigation season and we also have

1 33 exceedances in the non-irrigation season, totalling 71  
2 exceedances during the critical dry year periods, okay,  
3 and that's out of a total of 129 or 130 exceedances.

4           So in critically dry years you make up more than  
5 half of your exceedances are occurring in critically dry  
6 years. Well, if you go and you originally set your 303(d)  
7 based on 6 years of critically dry years occurring in a  
8 10-year record, what would you expect?

9           You would expect that your data would be skewed.  
10 And so what we did then was we went a step further and we  
11 broke it down. And your listing policies roughly says a  
12 25 percent exceedance. What we came up with is that in  
13 the irrigation season total you would have percent  
14 exceedances would be 16. And in the non-irrigation season  
15 they would be 14. The computer does its voodoo. We  
16 ruffed these out. There are about 15 percent total  
17 exceedances and then a total of 129. That should be 130.  
18 There's rounding errors involved plus or minus 1.

19           But what that points out is that since 1994 for  
20 the last 11 years -- 1995 -- we have met the salinity  
21 requirement at Vernalis. That's 120 -- call it 120 months  
22 that the salinity requirement has been met. We didn't  
23 add -- we were trying to be conservative. We did not add  
24 those numbers to these numbers. But if we did, these  
25 percentages would drop dramatically. And what this points





1 San Joaquin River, where are the impacts occurring, what  
2 are the beneficial uses we're protecting.

3           One of the things I've always thought that is  
4 kind of ironic about this whole listing is that the  
5 Vernalis salinity standard has been set to protect  
6 agricultural beneficial uses in the Delta, in the southern  
7 Delta. That's why the salinity standard was set at  
8 Vernalis.

9           Well, but the impaired body of water supposedly  
10 is the 130 miles from Mendota Pool to Vernalis. Well,  
11 wait, there's farming occurring along there, and there's  
12 agriculture occurring along there, and yet we're not  
13 saying that those people aren't impaired. The other thing  
14 that I find ironic about this is if you look at these  
15 critically dry years, and we went through this recently in  
16 an administrative civil liability hearing from the  
17 Superior Court.

18           One of the other interesting things about this is  
19 that we're releasing high quality water out at New Melones  
20 Reservoir in critically dry years to support a salinity  
21 standard at Vernalis -- the salinity standard at Vernalis  
22 to protect agricultural and beneficial uses in the  
23 southern Delta.

24           Well, one of the ironic things is though is the  
25 Board sends out under Term 91 or Term 93 orders to people

1 in the Delta to cease diversions for use of that water,  
2 pursuant to their permits, because they can't take and use  
3 stored water. And I won't go through the whole Term 91  
4 Term '93.

5           So we're releasing high quality water from New  
6 Melones in critical year periods and dry year periods.  
7 The Board issues cease and desist orders. Well, wait, if  
8 the purpose is to protect agriculture and beneficial uses,  
9 we're sending a mixed message. Because at the same time  
10 we're trying to make water quality better in the Delta,  
11 then we're sending a message to the farmers in the Delta  
12 and telling them that they can't use the water, because  
13 it's stored water under Term 91 or Term 93.

14           I think we need to spend some time on this. I  
15 think we need to go through it. I realize that the Board  
16 has adopted a TMDL. We will be moving for a motion for  
17 reconsideration of course of your decision to adopt that  
18 TMDL. And we'd like to have that hearing in January, that  
19 workshop to more fully discuss what are the impacts, what  
20 are the issues that we can get to and how can we address  
21 salinity control in the San Joaquin River.

22           Thank you very much.

23           CHAIRPERSON DODUC: Questions for Mr. O'Laughlin.

24           ENVIRONMENTAL SPECIALIST WILSON: Just a brief  
25 questions regarding you submittal. When you talk about

1 fact sheets, you're talking about the '96 information that  
2 was in --

3 MR. O'LAUGHLIN: 96/98.

4 ENVIRONMENTAL SPECIALIST WILSON: -- that was in  
5 the State Board and regional board's files?

6 MR. O'LAUGHLIN: Yes.

7 ENVIRONMENTAL SPECIALIST WILSON: Because we  
8 haven't addressed this issue in the 2006 activities. We  
9 don't have any fact sheets on this and the date is not in  
10 my record right now.

11 MR. O'LAUGHLIN: Yeah, I know. I made a. --

12 ENVIRONMENTAL SPECIALIST WILSON: I realize.

13 MR. O'LAUGHLIN: I made a Public Records Act  
14 request and there is no data. So that's -- I mean --  
15 that's why I feel strongly that we need to get the data  
16 and spend a day and go through the data with everybody in  
17 the room looking at the data sheets and what are the facts  
18 to support the 303(d) listing.

19 ENVIRONMENTAL SPECIALIST WILSON: And you're  
20 questioning just the listing at Vernalis or all the  
21 listings? There's 4 listings for the San Joaquin River.

22 MR. O'LAUGHLIN: The Lower San Joaquin River --

23 ENVIRONMENTAL SPECIALIST WILSON: -- is the only  
24 one you're interested in?

25 MR. O'LAUGHLIN: -- Salt and boron, that's the

1 only one. Very narrow, very focused. That's the only  
2 one.

3 CHAIRPERSON DODUC: All right. Thank you.

4 Since Mr. O'Laughlin raised the question of where  
5 is the impairment? What's the impact? Let's hear from  
6 Mr. Herrick. I'm beginning to know you guys a little bit  
7 too well.

8 MR. HERRICK: Thank you, Madam Chairman. John  
9 Herrick for the South Delta Water Agency. We have been  
10 here a lot and so I feel that I can be a little flippant  
11 when I say things like this is just nuts. To say that the  
12 San Joaquin River doesn't have a salinity impairment is to  
13 deny reality and 40 years of data.

14 There is no doubt that when the CVP began  
15 operation it caused drainage from the west side of the San  
16 Joaquin valley to go into the San Joaquin River at very  
17 high salinities. And those salinities continue to enter  
18 the river sometimes at amounts at or exceeding 5,000 TDS.

19 Now, the standard we have is EC at Vernalis, but  
20 translates approximately 450ish for TDS. So we've got 100  
21 miles of waterway with water quality at 2, 3, 5, 10 times  
22 the standard at Vernalis. The Bureau of Reclamation  
23 releases water from New Melones and it comes down the  
24 Stanislaus River and enters the channel just upstream of  
25 Vernalis, and they meet the -- they try to meet the

1 Vernalis water quality standard in what a 400-yard stretch  
2 of the river.

3           As it goes downstream, it degrades slowly.  
4 Upstream it's degraded horribly because of the situation.  
5 So we've got an extremely narrow compliance point and  
6 that's the only point being met.

7           We've got 100 miles of degraded river. Now, the  
8 fact that the regional board being directed by the State  
9 Board for the past 20 years to set an upstream standard,  
10 the fact that that hasn't occurred, that doesn't mean that  
11 there's no impairment upstream.

12           To suggest that areas haven't gone out of  
13 business for agriculture is an indication that there's no  
14 impairment is nonsensical. All the data that's been  
15 submitted over the years and the data before this Board,  
16 water quality degradation has, whether slight or great,  
17 decreases in crop production. If some guy is getting 4  
18 percent less crop production than he would normally, he  
19 doesn't keep track of that over the years, saying I would  
20 have gotten another 10 pounds per acres or something. But  
21 that's what this Board did over the past 30 years. It  
22 said well, we're going to take that into consideration.  
23 We will set limits, because we don't want further  
24 degradation in crop production.

25           There's no question here that this is what's

1 happening. And there is no question that it's going to  
2 continue to happen.

3           The Bureau of Reclamation operates New Melones to  
4 meet Vernalis. It doesn't make any releases to meet the  
5 downstream water quality standards. So the Bureau of  
6 Reclamation's intent right now is to meet the water  
7 quality in whatever it is that few hundred yard stretch of  
8 river where the mixing occurs and then the water will  
9 continue to degrade and will always be degraded upstream.  
10 The Bureau has no plan for upstream.

11           There's a federal law, HR 2820, that passed last  
12 year, that requires the Bureau not only to meet its  
13 obligations on the river but to decrease its use of New  
14 Melones water for those purposes. So to say that the  
15 future is bright and we're going to meet Vernalis much  
16 less the other standards is simply misleading the Board.  
17 That's not the plan.

18           Now, the upstream actions, which are very  
19 admirable to a great extent to address salinities are very  
20 good. But the Grasslands Bypass project has reused water.  
21 It's trying to hold the selenium in the area. The reuse  
22 of the water is concentrating the salts.

23           So although they've decreased the amount of  
24 discharges into the river that have salts, they're  
25 concentrating the salts. Now, some of it's being shoved

1 down below the ground and it's going into groundwater,  
2 which is on the gradient which goes towards the river and  
3 the other stuff, their plan is to get federal funding or  
4 some funding to have a desalination plant down there to  
5 remove the salts. And then they're going to take the  
6 water and sell it. They're going to use it somewhere  
7 else. It's not going into the river.

8           So their cure for upstream salinity is based upon  
9 somebody funding a \$100 million desalination plant. Well,  
10 whether that will or will not occur, who knows.

11           I'd also like to mention that Mr. O'Laughlin --  
12 offense for making this personal -- Mr. O'Laughlin  
13 references the CalSim II forecast that the picture is  
14 rosey. Well CalSim II is going through a peer review  
15 right now. And the preliminary draft -- it's a  
16 preliminary draft. I don't know when the final is going  
17 to be out. The preliminary draft questions the model's  
18 ability to predict low flows and salinities at those  
19 flows.

20           So to say that CalSim II has now made that the  
21 future is bright and shiny is wrong. We don't know yet,  
22 but it's doubtful that after 40 years of salinity problems  
23 in the river, readjusting the model results in compliance  
24 for the rest of eternity.

25           The time period from 1995 to the present when we

1 haven't had any exceedances at Vernalis allegedly is a  
2 time period of a number of extremely high flows. I would  
3 assume most of the people in this room are familiar with  
4 '95 and '97 and then this year, which had more water than  
5 anybody could deal with. To throw those into some sort of  
6 analysis as to whether or not there's an impairment in the  
7 river is to do the opposite of -- or is to do the same  
8 thing of what Mr. O'Laughlin complained about. He picked  
9 a nice rosey scenario period and said oh, there's no  
10 problems, while at the same time accusing the regional  
11 board of picking the very bad scenario to indicate that  
12 there is a problem.

13 Now, if you want evidence, which we will try to  
14 supply. I apologize for not having it before this time.  
15 I'm a one-man operation and the rest of the world is  
16 fighting against us, I understand that.

17 (Laughter.)

18 MR. HERRICK: It's very sad. It's very sad.

19 (Laughter.)

20 MR. HERRICK: But if you need support for the  
21 continuation of this listing, all you have to do is look  
22 at the regional board's report supporting the TMDL. And  
23 the Board's own counsel during the TMDL discussion at the  
24 Board meeting addressed all of Mr. O'Laughlin's comments.  
25 You can list a body that's upstream of a place that has a

1 problem or downstream, if it's a contributing factor.

2           But there is no doubt that there are huge volumes  
3 of salt, upwards of 500,000 tons of salt entering the  
4 river reach year. It goes over that in some years. Five  
5 hundred thousand tons of salt.

6           Now, it's interesting to note that the people  
7 that want this delisted are farmers who are getting, what,  
8 50 EC water up in the hills and that they can't understand  
9 why we're complaining about having degraded water quality  
10 downstream. Well, the standard is not that we've gone out  
11 of business because there's bad water quality. The  
12 standard is what the Board is looking at and should apply.

13           Now, let me just finally say the idea of -- the  
14 reference to Term 91 and Delta diverters being ordered to  
15 stop diverting when fresh water is being released under  
16 balanced conditions in the Delta. To my knowledge, the  
17 SWRCB sent 4 Term 91 notices to southern Delta diverters  
18 to shut down during those time frames.

19           Now, those are subject to litigation. We're not  
20 going to go into that. But to suggest that the Board is  
21 telling the south Delta to shut off operations in  
22 summertime when there's fresh water being released is  
23 again misleading the Board. That's not the situation.

24           There are riparians. And even if the Board wants  
25 to discount riparians, because people are alleging that

1 these people that lived on the river and farmed for the  
2 past 150 years aren't riparians, but all of the people in  
3 the south Delta virtually have appropriative rights of  
4 hire priority than the Bureau and they aren't ordered shut  
5 off in the summer, never.

6           The purpose of an agricultural beneficial use  
7 standard is to protect agricultural beneficial uses, and  
8 that's why we're here. We're supposed to protect them.  
9 Delisting the San Joaquin River is not taking a step  
10 backwards, it's driving a car backwards. It's just a  
11 nonsensical proposal to think that as we move forward and  
12 the obligations on the State and federal projects to  
13 finally meet the water quality standards in the Delta,  
14 finally the time has come, and now there's an effort to  
15 delay the standards, change the standards, delist the  
16 river, you can't find one person, except Mr. O'Laughlin,  
17 who thinks that there's no salinity problem on the San  
18 Joaquin River. And that's the absolute truth.

19           Thank you very much.

20           CHAIRPERSON DODUC: So is there anyone in this  
21 room that agrees with Mr. O'Laughlin, there is no salinity  
22 problem in the San Joaquin River.

23           MR. GODWIN: Of course we all agree.

24           CHAIRPERSON DODUC: I see one hand.

25           All right, Mr. Arthur Godwin.

1 MR. GODWIN: Arthur Godwin for Merced Irrigation  
2 District.

3 I'm going to switch gears and talk about a  
4 different constituent. I want to talk about mercury.

5 CHAIRPERSON DODUC: My second favorite.

6 MR. GODWIN: Well, you'll like this one then.  
7 Merced Irrigation District disagrees with the staff  
8 recommendation at this time to list the Lower Merced River  
9 from McSwain Reservoir to the San Joaquin River as  
10 impaired for mercury. We feel that it's not warranted to  
11 list the Merced River at this time, because of special  
12 circumstances involved in the proposal to list.

13 First of all, the lines of evidence on which the  
14 staff recommendation is based consist of only 2 fish  
15 tissue samples collected in 1998. The 2 fish sampled  
16 include large-mouth bass and a channel catfish. Both fish  
17 were taken near the mouth of the Merced River at George  
18 Hatfield State Recreation Area. We are aware of no other  
19 fish tissue sampling for mercury that has been conducted  
20 within that reach.

21 The entire watershed of the Merced River above  
22 McSwain Reservoir including Lake McClure is not currently  
23 listed for mercury. The San Joaquin River, on the other  
24 hand, has been so designated from the Bear Creek mouth to  
25 the Delta, a stretch of over 100 miles.

1           George Hatfield State Recreational Area is  
2 located about 1 mile from the mouth of the San Joaquin  
3 River -- or from the Merced River up above the San Joaquin  
4 River.

5           Both Largemouth Bass and channel catfish are  
6 highly mobile and could have easily swum up river. As a  
7 result, we have no way of knowing whether these 2 fish  
8 ingested mercury while residing in the San Joaquin River  
9 or elsewhere.

10           Furthermore, Section 6 of your policy contains  
11 guidelines for implementing the policy. And one of the  
12 requirements is that samples be representative of the  
13 waterbody segment. It also requires that samples  
14 collected within 200 meters of one another are to be  
15 considered samples from the same station. Your fact sheet  
16 listing for this mercury states that the samples were  
17 taken from 1 station at George J. Hatfield State  
18 Recreation Area.

19           The segment proposed for listing, on the other  
20 hand, is more than 56 miles long. Since both samples were  
21 obtained from the same location, they failed to meet the  
22 spatial representation guidelines contained in the policy.

23           Secondly, the sampling doesn't meet the temporal  
24 guidelines as both samples were collected on the same day.  
25 The guidelines state that if the samples were collected on

1 a single day, the data shall not be used as the primary  
2 data set supporting the listing decision.

3 So, at this time, we urge the Board not to list,  
4 at this time. At the very least, we would recommend that  
5 the State Board delay listing until further data can be  
6 collected.

7 Thank you.

8 CHAIRPERSON DODUC: Thank you.

9 Questions for Mr. Godwin?

10 I'm going to apologize ahead of time for mangling  
11 this name. MS. Debra -- I won't even try it, from the  
12 Turlock Irrigation District to be followed by Ms. Cindy  
13 Paulson.

14 MS. LIEBERSBACH: Good morning -- good afternoon,  
15 I should say. My name is Debra Liebersbach. I'm the  
16 Water Planning Department Manager for the Turlock  
17 Irrigation District.

18 I'd like to thank for the opportunity to provide  
19 comments on the proposed listings.

20 (Thereupon an overhead presentation was  
21 Presented as follows.)

22 MS. LIEBERSBACH: And I'd like to recognize the  
23 significant effort expended by the staff in reviewing the  
24 voluminous amounts of information provided in this  
25 process. And I want to encourage staff to take the time

1 to seriously consider the public's comments and review all  
2 of the data available to generate a true representation of  
3 the current health of the waterbodies within the state.

4 Our comments today will focus on the Harding  
5 Drain and Don Pedro Reservoir listings. Written comments  
6 will follow within the next week or so.

7 The Harding Drain is a constructed agricultural  
8 drain. It's a tributary to the San Joaquin river that is  
9 used to convey a variety of agricultural and urban flows.  
10 The drain was listed in 1998 for diazinon, chlorpyrifos  
11 ammonia, and unknown toxicity based on data gathered  
12 during the 1980s and 90s.

13 Until recently, the proposed listing for the  
14 Harding Drain TMDLs were set as a low priority with no  
15 specific completion dates specified. Now, recognizing  
16 that -- recognizing the water quality impairments -- or  
17 water quality improvements were needed -- excuse me -- the  
18 local efforts were initiated to address water quality  
19 impairments before TMDLs were developed.

20 Some examples of the improvements made include  
21 nitrification processes installed by the City of Turlock to  
22 reduce wastewater impacts associated with the ammonia  
23 listing. A joint effort by State and local interests were  
24 implemented to stop dairy-related discharges that were  
25 originally associated with the ammonia listing. And, in

1 fact, the January of '05 executive officer's report to the  
2 Central Valley Regional Board, cited the success of that  
3 program.

4 In addition, there has been changes with respect  
5 to agricultural discharges. The ag waiver is being  
6 implemented with efforts underway to monitor the quality  
7 of water entering local waterways from agricultural  
8 sources, and BNPs are being implemented to address issues  
9 identified through that process.

10 In addition, the use of diazinon chlorpyrifos has  
11 gone down considerably since 1995. And a BMP, basin plan  
12 amendment for diazinon and chlorpyrifos was recently  
13 readopted by the Central Valley Regional Board for the San  
14 Joaquin River that would result in additional  
15 improvements.

16 --o0o--

17 MS. LIEBERSBACH: There's also State funding  
18 that's been obtained to implement programs within the  
19 watershed. Proposition 13 funding is being used to  
20 install positive shut-off devices on field drains to give  
21 growers a means to control the quantity and quality of  
22 water leaving local fields. Prop 50 funding was obtained  
23 to conduct water quality monitoring and develop a  
24 watershed plan.

25 One goal of that project is to improve the water

1 quality, such that TMDLs are no longer required. As you  
2 can see by this slide, the proposed changes in the TMDL  
3 due dates come before the local projects designed to  
4 address these issues are completed. Rather than  
5 undermining these local efforts by imposing regulatory  
6 controls before local efforts are effectively implemented,  
7 I urge the State to support local efforts currently  
8 underway. New data to be presented in a moment show that  
9 these types of local efforts are extremely successful.

10           Instead of concentrating on issues already being  
11 tackled at the local level, the State's limited resources  
12 would be better spent in focusing on water quality  
13 impairments not being addressed by other issues. With  
14 that said, I'd like to turn it over to Dr. Cindy Paulson  
15 with Brown and Caldwell to discuss the new data available  
16 for the Harding Drain, and also to discuss our continuing  
17 concerns regarding the scientific basis for the Don Pedro  
18 Reservoir mercury listing.

19           CHAIRPERSON DODUC: Before you do, let me make  
20 sure I understand, you're proposing waiting until  
21 completion of the watershed plan implementation phase?

22           MS. LIEBERSBACH: Well, Cindy is going to talk a  
23 little bit about it, but essentially we have new data that  
24 shows that the ammonia listing and the diazinon  
25 chlorpyrifos listings should be removed, and that there

1 are no longer impairment for those particular  
2 constituents. And then for the toxicity, the unknown  
3 toxicity listing, we want to continue to have the due date  
4 far into the future to allow this process to unfold and to  
5 allow the local efforts to be successful in removing --  
6 identifying what that unknown toxicity might be and  
7 improving the water quality associated with that to remove  
8 the listing. And then the State doesn't need to develop  
9 the TMDL.

10 CHAIRPERSON DODUC: And by far into the future  
11 from this chart, are you suggesting 2011?

12 MS. LIEBERSBACH: In the current chart I believe  
13 it's listed as 2019, so it's far in the future. We're  
14 okay with that.

15 CHAIRPERSON DODUC: Okay.

16 DR. PAULSON: Thank you, Chair Doduc. My name is  
17 Dr. Cindy Paulson. And I've been working with the Turlock  
18 Irrigation District over the last several years on water  
19 quality issues. And what I'd like to do today is present  
20 some of the new data that have been collected.

21 --o0o--

22 DR. PAULSON: This is just a map of the TID  
23 system, which shows the 3 sites in particular where data  
24 have been collected for September -- from September 2001  
25 through September 2003. The Ceres Main Drop 32 or CMD32



1 all of the data that were collected over that 3-year  
2 period, essentially 74 data they were collected every 2  
3 weeks for 3 years, all of those values were at or below  
4 the chronic criteria.

5 --o0o--

6 DR. PAULSON: Now, as we move downstream, this is  
7 Harding Drain 1 site, that's just below where the City of  
8 Turlock's wastewater comes into that system. And the  
9 green vertical line is the timing of the improvements at  
10 the City's wastewater treatment plant.

11 And the plot demonstrates, I think, pretty  
12 clearly the improvement in water quality relative to  
13 ammonia with the implementation of those improvements.  
14 Post the improvements there were 2 exceedances, and that  
15 was out of a total of 55 total data. Based on the water  
16 quality control policy, the 2004 policy, the binomial  
17 distribution would allow for 4 exceedances before the  
18 water should be listed. So these data support delisting  
19 of the Harding Drain for ammonia at this HD1 site  
20 reflecting the improvements that took place with the  
21 City's wastewater treatment plant.

22 --o0o--

23 DR. PAULSON: This is further downstream at HD2.  
24 And this reflects even lower concentrations of ammonia.  
25 Primarily as a function of dilution from other water



1 We've pooled all 3 of the sites here because we don't have  
2 an upstream/downstream impact like we did with the City of  
3 Turlock's Wastewater Treatment Plant. We compared these  
4 values to the water quality guideline that is presented in  
5 the 303(d) staff report. There's a table of guidelines.  
6 And this value is essentially based on the criteria that  
7 the Department of Fish and Game developed based on U.S.  
8 EPA guidance. And this is a chronic or long-term  
9 criterion, more restrictive than the acute criterion.

10 When we look at the data here pooled for all of  
11 the sites, there were 219 data. There were 9 exceedances  
12 of the water quality guideline. Based on the binomial  
13 distribution, 18 exceedances would be allowed to even  
14 support delisting.

15 So these data as well support the delisting.  
16 There were half as many exceedances as would be allowed  
17 essentially to delist this water.

18 CHAIRPERSON DODUC: Question. Is there available  
19 data beyond the time period that you have listed here?

20 DR. PAULSON: There were some USGS NAWQA data  
21 that were also collected just prior -- actually, I  
22 think -- let me just check here. They were collected in  
23 2001 and 2002 as part of the NAWQA studies. And there  
24 were 11 data points each for chlorpyrifos and diazinon.  
25 There were no exceedances of the water quality guidelines

1 for that time period.

2           One of the other things just to reiterate too is  
3 that there has been a significant reduction in the use of  
4 chlorpyrifos and diazinon since 1995. So I would expect  
5 if there were more historic data available, you would be  
6 able to see, I think, a decline that would reflect the  
7 decline in use.

8           So based on this data for the pooled sites as  
9 well as the individual sites, this meets the delisting  
10 criteria for chlorpyrifos.

11                               --o0o--

12           DR. PAULSON: A similar story for diazinon,  
13 again, the water quality guidelines that are presented in  
14 the 303(d) staff report. And for diazinon there were 8  
15 exceedances out of 219 data. Again, there would have been  
16 18 that would have been allowed.

17           So taken individually -- and this also the same  
18 thing, the same story here, taken individually for each of  
19 the sites as well as the pooled data, they all pass the  
20 delisting criteria.

21           You heard earlier today about additive toxicity  
22 of chlorpyrifos and diazinon. So using the equation  
23 that's presented in the staff report for the Lower San  
24 Joaquin River diazinon chlorpyrifos basin plan amendment,  
25 we used the -- looked at additive toxicity. There's an



1 that are present in that system. It focused only on the  
2 highest trophic levels ignoring data for a trophic level  
3 3 -- several trophic level 3 samples. And the analysis  
4 also discarded below detection values. So rather than  
5 counting them in the analysis, they were discarded from  
6 the analysis.

7 In the response to comments for the 2002 staff  
8 report, there was acknowledgement that the approach was  
9 not applied and there was a commitment to apply that in  
10 future listings. There has been no further analysis or  
11 work done on the Don Pedro Reservoir in the current staff  
12 report. It's still listed with no additional discussion.  
13 It's listed with a TMDL completion date of 2020.

14 It's our feeling that this really should be  
15 reevaluated, that at a minimum the existing data should be  
16 relooked at, but more importantly really that new data  
17 should be collected using a clean technique approach,  
18 using a more representative approach, collecting data that  
19 would essentially meet the listing criteria that are  
20 included in the 2004 guidance before it's left on the  
21 303(d) list.

22 One other comment too is that there were no  
23 health advisories -- have been none for Don Pedro  
24 Reservoir. And back in 2002 when we contacted a  
25 representative of the Tuolumne County Health Department,

1 he noted that he was aware of the proposed listing, but  
2 was quote very surprised that he didn't feel that data  
3 supported it. There doesn't seem to be any real basis for  
4 that listing.

5 Just quickly in summary.

6 --o0o--

7 DR. PAULSON: Our request is that the Harding  
8 Drain be delisted for ammonia, diazinon and chlorpyrifos  
9 to reflect the improvements in water quality that have  
10 been documented in the new data that are available. And  
11 also to support the ongoing local projects that are State  
12 funded to investigate and resolve the sources of unknown  
13 toxicity. There is ongoing work there to address that,  
14 and we're hopeful that reductions in ammonia and in  
15 chlorpyrifos and diazinon use will help to support that,  
16 but that if there are other sources of toxicity -- an  
17 unknown toxicity, we will be able to get at those over the  
18 next couple of years through this very detailed monitoring  
19 and evaluation program for the Prop 50 project.

20 As Ms. Liebersbach suggested, we'd like to allow  
21 sufficient time for ongoing local water quality  
22 improvement efforts to be completed and would like to see  
23 the dates not moved up for any of the Harding Drain TMDLs.  
24 What we'd really prefer is that the 3 constituents be  
25 delisted for Harding Drain.

1           And finally, we'd like to see Don Pedro Reservoir  
2 delisted for mercury until more accurate data can be  
3 collected. We will be summarizing these comments in a  
4 detailed letter and we'd be happy to meet with staff to  
5 discuss the new data at any time on the Harding Drain.

6           Thank you very much.

7           CHAIRPERSON DODUC: Thank you, Dr. Paulson.

8           Questions?

9           All right, Ms. Cynthia Elkins.

10          MS. ELKINS: Good afternoon. Thanks for allowing  
11 me to address you again, Madam Chair and Members of the  
12 State Board. My name is Cynthia Elkins. I'm with the  
13 Center for Biological Diversity.

14          And, again, I'd like to reiterate our support for  
15 the listing of exotic species for the San Joaquin --  
16 portions of the San Joaquin River, the Delta waterways and  
17 Bodega Bay. Exotic species are a significant problem  
18 throughout the country, and, in fact, are the second  
19 leading cause or second leading threat to endangered  
20 species.

21          It's believed that exotic species adversely  
22 affect more than twice the number of species as other  
23 forms of pollutants. And it's also believed that exotic  
24 species are a contributing factor or were a contributing  
25 factor in almost 70 percent of the extinctions in north

1 America last century.

2           The problems with exotic species are not limited  
3 to the watersheds that are proposed for listing, however,  
4 and there are many other watersheds throughout the central  
5 valley that are experiencing dramatic problems due to  
6 non-native introduced species.

7           I'd like to focus on 2 of these. And we are  
8 specifically requesting that the regional board -- or  
9 excuse me, that the State Board add these waterbodies to  
10 the list as well. These are the South Fork of the San  
11 Joaquin River and the Middle Fork of the Kings River.

12           These areas flow from high in the Sierra from  
13 high alpine lakes and traditionally, historically nearly  
14 all of these lakes above -- well, actually all of the  
15 lakes above 1,800 meters were naturally fishless.  
16 Beginning in the late 1800s stocking of these lakes began  
17 to occur and the streams as well with non-native trout  
18 species such as brown trout.

19           Now, only approximately 7 percent of the lakes in  
20 the national forests in this area are fishless,  
21 specifically looking in the John Muir Wilderness Area.  
22 And this is wreaked absolute havoc on the native species  
23 in the area, in particular the native amphibians, but also  
24 it is causing very serious adverse impacts to native  
25 fishes, macro-invertebrates and other kinds of species.

1           Unfortunately, these non-native trout species are  
2 highly effective predators. And because these alpine  
3 lakes were naturally fishless, these species are not  
4 adapted to having such predators in their habitat. The  
5 decline of mountain yellow-legged frog in particular  
6 attributed largely to the introduction of non-native trout  
7 species. And the decline of mountain yellow-legged frogs  
8 in response to these introductions was documented as early  
9 as the 1920s. And since that time voluminous information  
10 has been gathered and numerous studies have been  
11 undertaken to further document these problems.

12           The mountain yellow-legged frog was formally  
13 widespread throughout the Sierra Nevada mountain range  
14 above 1,500 meters. But by 1994 studies and surveys  
15 showed that its presence -- it was present in only about  
16 15 percent of the sites where it was found in 1915.  
17 Unfortunately, since 1994 these declines have continued  
18 and the species is extirpated from many places that  
19 historically occupied.

20           It's estimated that non-native trout  
21 introductions is responsible for a 10-fold increase -- or  
22 excuse me a 10-fold reduction in mountain yellow-legged  
23 frog populations. This species is right at the brink of  
24 extinction. And absent very concerted efforts to protect  
25 it and reverse these problems, we're likely to see the

1 extinction of the mountain yellow-legged frog within our  
2 children's lifetime.

3           So we strongly encourage the Board to consider  
4 the evidence that we will be putting in front of you, and  
5 to consider listing these waterbodies and ensuring that  
6 the beneficial uses of these important watersheds are  
7 protected.

8           Thank you.

9           CHAIRPERSON DODUC: A question for you Ms.  
10 Elkins. Do you have any thoughts on Mr. Karkoski's  
11 comment that if exotic species are listed that we specify  
12 the species instead of a general listing?

13           MS. ELKINS: I think in some cases that might  
14 make sense. But in places like San Francisco Bay where  
15 you have such a large number of pollutants, that it makes  
16 more sense to just list exotic species as a pollutant  
17 source.

18           I know in Louisiana, for instance, there is an  
19 estuary there that is listed for specific plant species,  
20 for example. And there I don't know that they're really  
21 experiencing other problems with other invasives.

22           CHAIRPERSON DODUC: Thank you.

23           Mr. Robert Carey.

24           MR. CAREY: Good afternoon, Chairman Doduc and  
25 members of the Board.

1           My name is Robert Carey. I'm here today  
2 representing W.M. Beaty & Associates. We are a land  
3 management organization that manages family-owned  
4 timberland to the tune of about 280,000 acres. Of those  
5 280,000 acres approximately 20,000 of them drain to the  
6 Fall River in Shasta County, which is currently on the  
7 303(d) list as impaired for sediment and siltation. The  
8 sources listed currently include silviculture, road  
9 construction and agriculture.

10           The history of the listing for Fall River is a  
11 little ambiguous. I have not been able to find any  
12 information regarding source data that led to the original  
13 listing. We're here to ask today that silviculture be  
14 removed as a source of sediment from the Fall River. A  
15 study was conducted in 1998 after a fair amount of  
16 sediment began showing up in the river during high-flow  
17 water years, primarily as a result of catastrophic events,  
18 including flooding, the failure of a railroad culvert  
19 crossing and a wild fire that had occurred several years  
20 ago -- several years before that.

21           What the Tetra Tech study did was look at the  
22 sediment that's in the -- currently in the Fall River and  
23 evaluate what the likely sources of that material were.  
24 They found that primarily reduced meadow function in some  
25 of the overland tributaries immediately upstream from the

1 Fall River had been channelized in the 1960s. The result  
2 was loss of that meadow function that slows water velocity  
3 down and allows suspended sediment to settle out in those  
4 alluvial flood plains. And also because the velocity is  
5 maintained, it exacerbates other channel bank erosion.

6 So the Tetra Tech study identified a couple of  
7 key things that needed to be done. Primarily, the Bear  
8 Creek meadow that had been channelized in the 60s for  
9 flood control needed to be restored. That work was  
10 completed. It's on private land -- private parcel, not  
11 managed by Beaty & Associates. But nonetheless, we were  
12 involved in part of the design of that reconstruction.

13 And based on the Tetra Tech report, approximately  
14 50 percent of the sediment entering the Fall River in any  
15 one year would be controlled by restoring that naturally  
16 functioning hydrologic meadow system, so it slows the  
17 water down and allows a lot of sediment to settle out, et  
18 cetera.

19 I'm going to jump to my notes here real quick. I  
20 also wanted to mention that Beaty & Associates is here to  
21 support the Fall River Resource Conversation District  
22 information that was presented. I've got a letter dated  
23 from them that was actually dated 11/22/05. I'm assuming  
24 that you've already received that letter and it's in your  
25 record. So, again, I wanted to just lend our support to

1 their position.

2           They have a number of folks on staff and they've  
3 worked carefully with a number of folks from State  
4 agencies, including the Central Valley Regional Water  
5 Quality Control Board staff, field staff and executive  
6 staff in the Redding office, and have gotten a tremendous  
7 amount of support for our position at this point. We've  
8 added our comments through, like I said, the regional  
9 board staff, Cal Fish and Game, the Wild Trout Program,  
10 and the Natural Resources Conservation Service who were  
11 instrumental in developing the sediment budget for the  
12 Tetra Tech report that I cited in my comments.

13           I wanted to mention that the reason the  
14 restoration actions have been successful is because we've  
15 had tremendous buy-in from local and land owners. People  
16 that are interested in doing stewardship projects, fencing  
17 meadow systems, controlling livestock, providing off-site  
18 water so livestock don't have to access natural stream  
19 banks, all of those things together have helped identify  
20 and correct and eliminate the sediment sources that have  
21 caused the sedimentation problem in the Fall River.

22           There still is an existing slug of sediment in  
23 the river. The Tetra Tech report identified that it would  
24 take many, many years to the turn of centuries before that  
25 material moved out of the river naturally. The flows and

1 the spring-fed nature of the Fall River just do not lend  
2 themselves well to flushing that material out. That was  
3 one of the reasons that local public concern prompted the  
4 investigation into sediment sources in the Fall River in  
5 the early to mid-1990's.

6           So by revising the listing and removing  
7 silviculture and road-building agriculture from the  
8 current stressors, it sends a message to the cooperative  
9 land owners that want to do these kind of stewardship  
10 projects that, you know, their achievements are being  
11 recognized. You reduce the amount of regulatory burden on  
12 land owners simply because their adjacent to a listed  
13 waterbody. And with the way the Central Valley monitoring  
14 program is going right now for silviculture and  
15 agricultural waivers, simply draining to a listed body ups  
16 the bar, so that there is more paperwork, more regulatory  
17 hurdles to cross when, in fact, there's no evidence  
18 silviculture has ever been a contributing factor to Fall  
19 River sedimentation problems.

20           So quoting from the Fall River Conservation  
21 District letter, it says, "We specifically request that  
22 the stressor be changed from sediment/siltation to  
23 historic accumulations of sand-sized sediment and remove  
24 silviculture and other items listed as current sources to  
25 be replaced with meadow channelization and other historic

1 activities and catastrophic events.

2           Again, that's a more accurate depiction of the  
3 existing condition within the Fall River and all of the  
4 evidence that has been collected to identify those sources  
5 and develop cause and effect relationships. From there,  
6 the action has gone to -- from the identification of those  
7 sources to actually corrective actions.

8           And I would just hope that the State Water Board  
9 would want to reinforce cooperative land owner's ideas  
10 that doing those kind of stewardship practices gets you  
11 rewards and not punishments.

12           I'm trying to see if I had any other points to  
13 make. Again, my comments are written. And I'm really  
14 just trying to summarize and take some of the high points  
15 out of them.

16           I would also encourage the State Board to engage  
17 the regional board in a discussion, because like I said we  
18 have vetted our opinions through the local people that are  
19 involved and are quite knowledgeable about the system, and  
20 have got no disagreement at all from them that this was an  
21 appropriate time to take this action.

22           Thanks very much.

23           CHAIRPERSON DODUC: Thank you.

24           Mr. Lee Mao.

25           MR. MAO: Good afternoon, Madam Chair Doduc. My

1 name is Lee Mao. I'm with the Bureau of Reclamation here  
2 in Sacramento. And my comments are fairly similar to Mr.  
3 O'Laughlin, so I'm going to go through and highlight those  
4 points of my comments. And we'll be submitting our  
5 detailed supporting documents by the January 17th  
6 deadline.

7 Reclamation supports the request to delist the  
8 Lower San Joaquin River from Mendota Pool to Vernalis for  
9 the salt and boron impairment. And we feel that they are  
10 for the following reasons in summary: We have data more  
11 than 10 years worth of data to show compliance with the  
12 water quality standards at Vernalis.

13 CHAIRPERSON DODUC: What about Mr. Herrick's  
14 comment that those 10 years included all the wet years?

15 MR. MAO: That's true, and that's why Reclamation  
16 has made a statement to -- well, here's my next statement  
17 is that Reclamation is committed in meeting the terms and  
18 conditions as stated in our permit in the future years  
19 including critical dry years, and that is stated in our  
20 salt and boron comments that we submitted back in last  
21 month in November.

22 The next point is the initial analysis used for  
23 listing the Lower San Joaquin River did not consider the  
24 significant impacts from the changes in the basin. And  
25 these were very similar to Mr. O'Laughlin's comments

1 regarding hydrology, Grasslands Bypass project and also  
2 the modeling -- the current modeling that was done.

3           Finally, the initial analysis was performed using  
4 the model that didn't accurately reflect the basin. The  
5 new CalSim II model, which is a planning model with the  
6 new water quality module provides a more accurate  
7 portrayal of the current conditions of the basin. And  
8 that is the model that -- CalSim II is the model of choice  
9 for current and future studies because of its updated data  
10 sets and improved simulations of the San Joaquin River  
11 operations, and particularly of the non-federal  
12 reservoirs.

13           And Mr. Herrick's comments regarding CalSim II  
14 peer-reviewed draft report stated that the CalSim -- you  
15 know, the issues. We understand that -- I mean, there's  
16 some documentation stuff that we are going to be working  
17 on, we meaning Reclamation and DWR and of course  
18 consultants.

19           But nevertheless, the peer-review group agrees  
20 that CalSim II it's a more accurate reflection of the  
21 current conditions of the basing. It's a more accurate  
22 model. And we'll continue to go through refinements of  
23 the model.

24           In summary, the water quality objectives have  
25 been met for over 10 years, which is protective of the

1 identified existing and potential beneficial uses of the  
2 Lower San Joaquin River. Reclamation believes that the  
3 data and information presented to you warrants a request  
4 to delist the Lower San Joaquin River from the 303(d) list  
5 for salinity and boron. And, of course, we will be  
6 submitting our supporting documents by the deadline.

7 Any questions?

8 CHAIRPERSON DODUC: No. Thank you.

9 And our final commenter today, the new  
10 Deltakeeper. Welcome, Ms. Carrie McNeil.

11 MS. McNEIL: Thank you very much. New as of 2 or  
12 3 days ago. I partly just wanted to come and introduce  
13 myself to you guys and to express our continued interest  
14 in this issue. And specifically to thank you for listing  
15 the exotics in the Delta waterways and the portion of the  
16 Feather River.

17 And not to repeat anything and just to add a  
18 little to Ms. Elkins' comments. It was actually a  
19 Baykeeper and the Northwest Environmental Advocate lawsuit  
20 against the PA in which the court found that exotics are  
21 considered pollutants just like bacteria and viruses and  
22 it's not a source issue.

23 I also just wanted to briefly address some of the  
24 issues brought up by the Turlock Irrigation District. And  
25 that is that Deltakeeper, Baykeeper we applaud all the

1 efforts that industry and individuals are making to  
2 increase the water and improve the water quality of this  
3 state, but we feel it's very important to continue listing  
4 waterways until those objectives have been met, because  
5 it's just -- we can't base that on hope for future  
6 continue improvements, though of course we hope that's the  
7 direction it goes in.

8 I'd also like to encourage the staff to address  
9 pesticide issues, including the additive and synergistic  
10 effects in the Delta waterways due to the irrigated  
11 agricultural runoff.

12 And, again, as the new person on the block here  
13 and as a scientist, actually as an ecosystem health  
14 veterinarian, I'm very excited to look into this  
15 information and into the listing information and provide  
16 detailed comments in January, but thank you very much and  
17 appreciate it.

18 CHAIRPERSON DODUC: Thank you.

19 And with that, does anyone else have anything  
20 they wish to add?

21 Seeing none, the record again will remain open  
22 until January 17th, and the next workshop will be in  
23 Pasadena on Thursday, January 5th.

24 Thank you all for attending.

25 //////////////

1           (Thereupon the California State Water Resources  
2           Control Board public hearing adjourned  
3           at 1:45 p.m.)  
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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing California State Water Resources Control Board  
7 public hearing was reported in shorthand by me, James F.  
8 Peters, a Certified Shorthand Reporter of the State of  
9 California, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 27 day of December, 2005.

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JAMES F. PETERS, CSR, RPR

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