

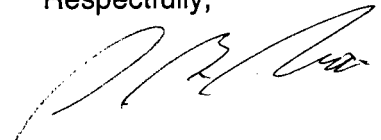
27-Nov-01

Diane Beaulaurier
State Water Resources Control Board
Division of Water Quality
PO Box 100
Sacramento, CA 95812-0100

Hi Diane,

Here is another piece of the submittal package from Region 9 for 303(d). This is the written transcript of the October 24th, 2001 Board Meeting at which our 303(d) list was presented as an informational item. No formal Board action was expected or taken.

Respectfully,

A handwritten signature in black ink, appearing to read "Jimmy Smith", written over a horizontal line.

Jimmy Smith

1 STATE OF CALIFORNIA

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2 REGIONAL WATER QUALITY CONTROL

2001 NOV 20 P 2:09

3 BOARD SAN DIEGO REGION

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10 Wednesday, October 24, 2001
11 Regional Water Quality Control Board
12 9174 Sky Park Court, Suite 100
13 San Diego, California

14 STATUS REPORT
15 ITEM 10

16 (Reporter's Transcript of Proceedings)

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19
20 CERTIFIED
21 COPY

22 STATUS REPORT: Clean Water Act Section 303(d) List of
23 Impaired Waters - 2002 Update.

24 REPORTED BY:
25 GRACE A. VERHOEVEN
CSR NO. 11419

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STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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APPEARANCES

BOARD MEMBERS:

JOHN MINAN, CHAIRMAN - Water Quality
GARY STEPHANY, VICE CHAIR - Undesignated (Public)
WAYNE BAGLIN - Municipal Government
LAURIE BLACK - Water Quality
JANET KELLER - Recreation/Wildlife

EXECUTIVE STAFF:

JOHN H. ROBERTUS, Executive Officer
LORI COSTA, Executive Assistant

STATE BOARD STAFF COUNSEL:

JOHN RICHARDS

WATERSHED BRANCH

MICHAEL McCANN, Supervising Engineer

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1 SAN DIEGO, CALIFORNIA; WEDNESDAY, OCTOBER 24, 2001

2 ITEM 10

3
4 CHAIRMAN MINAN: That will close Agenda Item 8, and
5 we move to Agenda Item 10 because Agenda Item 9 has been
6 deleted from the agenda. Mr. Robertus, would you introduce
7 this item and call the staff person to report on it.

8 MR. ROBERTUS: This item, Item 10 is a status
9 report on a rather vigorous action that's consumed a great
10 deal of energy by the Region 9 people and, in fact,
11 throughout the state. It's also been a matter of
12 discussion at the chairs' meeting up in Sacramento.

13 And the comment I would like to make is it
14 was made clear to all the executive officers and the board
15 chairs that this matter, the 303(d) list this year, has not
16 had an action taken by the Board. Therefore, this agenda
17 item is not for an action by the Board. It's basically to
18 inform board members and the public here present where we
19 are in the submission by this regional board of waters to
20 be listed and waters that are already listed that will be
21 submitted to USEPA. So at this time I'd like to introduce
22 Mr. James Smith who has been working diligently on this.
23 Mr. Smith?

24 MR. SMITH: One moment while I set up here.

25 CHAIRMAN MINAN: As Mr. Smith sets up,

1 Mr. Robertus, we've had a conversation indicating that the
2 information on page 14 in the report which says that this
3 document has not been approved by the California Regional
4 Water Quality Control Board San Diego Region members, but
5 is presented only as an informational item and it would be
6 included on the title page of the report, and I assume that
7 you will comply with that.

8 MR. ROBERTUS: Yes, we will.

9 MR. BAGLIN: May I ask a question that relates to
10 that? Other than interpreting what Chairman Minan just
11 said as a gag order on members of this board, there is an
12 opportunity for members of the public and so on to submit
13 comments on this for an ongoing period now and after this
14 meeting; is that correct?

15 MR. ROBERTUS: I believe the public comment period
16 is still open. In fact, we will continue to take
17 information, and if we find reason to change something we
18 submitted as a recommendation, we would change that. I
19 don't want to steal any of Mr. Smith's thunder, but there's
20 still an ongoing discussion about Caulerpa taxifolia in one
21 of our water bodies, hopefully only one of them.

22 MR. BAGLIN: I guess what I was getting at was my
23 first amendment rights during this meeting, and that is we
24 can ask some questions or clarification on the information?

25 MR. ROBERTUS: Absolutely.

1 CHAIRMAN MINAN: My point is that the State Board
2 policy is that we not take action on it, and I want to make
3 sure that was up front on anything that was sent out to the
4 broader public. Because if we're told not to do so, it
5 should be included.

6

7 JAMES SMITH,

8 MR. SMITH: Chairman Minan, members of the Board,
9 good afternoon, my name is Jimmy Smith. I am a new
10 environmental scientist working on as project lead on
11 updating the Clean Water Act Section 303(d) List of
12 Impaired Waters for 2002 update. Today I present a status
13 report on our efforts.

14 I believe there is an errata sheet that
15 contains a few last minute changes, and hopefully you all
16 received that. I hope you all received the entire agenda
17 package as well and had a chance to review it. I recognize
18 that our staff report was in the late mailing and that you
19 only just received it. I am prepared to go over the
20 highlights of that agenda package if you would like.

21 I see one head nodding over there. Our
22 staff report contains an introduction to the issue, listing
23 rationale, and summary statistics on our list update.
24 Table 1 and Figure 1 show the previously-listed water
25 bodies. Table 2 is a list of all the data we reviewed.

1 Table 3 and Figure 2 show the draft update of the list for
2 2002.

3 Table 4 shows the updated list of beach and
4 shoreline closures due to bacterial contamination. Table 5
5 and Figure 3 show the combined 1998 and draft 2002 list of
6 impaired waters. And then Table 6 shows constituents that
7 may be causing impairment in our surface waters. For
8 pollutants in this category more information is needed
9 before we can make any proper assessment.

10 Appendix A contains all copies of public
11 solicitation and participation, and, finally, Appendix B
12 are the fact sheets that support our listings.

13 The 2002 update represents the 13th version
14 of the 303(d) list. For the first time regional boards are
15 not conducting any of the procedures involved in formal
16 adoption of the list. This change comes at the request to
17 the State Board.

18 Regional boards will simply solicit and
19 analyze data and make recommendations to the State Board.
20 A list will be presented to board members as an
21 informational item which we're doing today, and no formal
22 action needs to be taken.

23 The staff report will be submitted to the
24 State Board who will conduct the formal process. We also
25 recognize that the public has only had access to this list

1 update since Monday afternoon. Regional Board staff will
2 begin the informal process by conducting a public workshop
3 and receiving public comments.

4 Any change resulting from today's board
5 meeting, from board member comments, public comments, or
6 from the public workshop will be forwarded to the State
7 Board as either an amendment to our staff report or as a
8 revised version of that report. These changes will be
9 brought before the Board at a future board meeting.

10 The State Board will act as the lead in the
11 formal process. It will formulate a single statewide list
12 of impaired waters and begin the formal process of public
13 participation.

14 They will produce written responses to
15 public comments and hold public workshops. During this
16 time, public input and regional input can continue to be
17 made. This is an important point that I really want to
18 stress. Finally, it is the State Board that will conduct
19 the formal public hearings and consider adopting the final
20 single statewide list for submittal to the USEPA.

21 Since procedures are a little different this
22 time, I think it's important that we all understand how
23 it's going to take place for 2002. So I presented a brief
24 outline of coming milestones.

25 Yesterday the draft list was posted on our

1 website. Notices of the list availability were also mailed
2 to the entire agenda mailing list and to our electronic
3 303(d) E-mail list. Mailings also served notice of an
4 informational public workshop to be held on November 29th
5 2001, and this serves as the beginning to the process of
6 informal public participation.

7 Today the draft list is presented to the
8 Board as an informational item. Again, this comes at the
9 request of the State Board. At the end of this month, we
10 will submit our draft list and all supporting documents to
11 the State Board per their deadline.

12 At the end of next month, we will be holding
13 an informational public workshop. This complies with the
14 30 days required between posting of the list and conducting
15 any public meetings as described in the Clean Water Act.

16 This winter the State Board will address
17 public comments and conduct formal public workshops.
18 Public and regional comments and input can continue to be
19 made during that time. And next spring, again, is when the
20 State Board will consider adopting a single statewide list.

21 At this point if the Board desires, I am
22 prepared to go into a little more detail about the history
23 and the methodologies we use for our listing. As I
24 understand, you just received this package and it's quite a
25 package. I am prepared to do this at this time if you

1 would like. If not, I will simply jump forward and present
2 our results for this 2002 list update.

3 CHAIRMAN MINAN: Jump forward. I think we would
4 like you to go forward.

5 MR. SMITH: This slide presents the waters we are
6 recommending for addition to the list or waters that were
7 previously listed that we are recommending for listing of
8 additional pollutants. The red letters and symbols
9 represent marine shorelines. Light blue are rivers. Brown
10 are estuaries. Green are bays, and blue are lakes.

11 We proposed a listing of 24 new water
12 bodies, 15 new pollutants, producing 49 new combinations of
13 water bodies and pollutants. This map has 15 creeks,
14 2 lakes, 1 estuary, 1 bay, 1 harbor, and 6 stretches of
15 marine beaches.

16 We also propose the addition of four new
17 pollutants to previously-listed water bodies. We also
18 propose the change in extent of impairment for 18
19 previously-listed water bodies. At this time no delistings
20 are recommended. It should be noted that delistings can be
21 done during this process. But for this listing, we had no
22 data to support any delistings.

23 Previously-listed water bodies were only
24 re-evaluated if new data or information was available.
25 This graph shows you the combined 1998 and draft 2002 list

1 of impaired waters. The complete list will contain 60
2 defined water bodies, 34 pollutants, producing 141 unique
3 combinations of water body and pollutant.

4 We feel this list not only complies with the
5 Clean Water Act, but also helps fulfill our mission
6 statement to preserve and enhance the quality of our water
7 resources.

8 In summary, I reiterate that the State Board
9 has requested that this item be presented as only an
10 informational item, and it requires no formal action. We
11 will submit the draft list on the 31st of the month to meet
12 our deadline, and we're only just beginning the informal
13 public process. It is the State Board that will initiate
14 and conduct the formal process.

15 Based on comments heard today and in the
16 future, we may make changes to our 303(d) list, and we will
17 bring these to your attention at a future board meeting.
18 If the Board has no questions of me at this time, I know
19 there are representatives, public dischargers, and from
20 environmental groups that would love to have a chance to
21 speak.

22 CHAIRMAN MINAN: Mr. Smith, I have a question for
23 you. I believe there may be some other questions.

24 As I read the Executive Officer Summary
25 Report, it says rather clearly on page 2, it also

1 recommends the addition of four new pollutants of
2 previously-listed water bodies and changes the extent of
3 impairment for 17 previously-listed water bodies. That's
4 in the Executive Officer Summary Report.

5 However, on page 4 of the Executive Summary
6 Report, the following statement is made. And the statement
7 is the current draft list update recommends the addition of
8 24 new water bodies and 15 new pollutants, and I'm
9 confused.

10 MR. SMITH: Hopefully that should be addressed in
11 our errata sheet. There was a couple of mistakes that we
12 tried to correct.

13 CHAIRMAN MINAN: I'm not sure that I got a copy of
14 an errata sheet.

15 MR. SMITH: The correct number is four new
16 pollutants to previously-listed water bodies, though.

17 CHAIRMAN MINAN: That is different from what
18 appears in the draft report on the executive summary.
19 So if there are corrections, those corrections need to be
20 incorporated. I didn't get a copy of that.

21 MR. SMITH: I think they're coming around now.

22 MR. ROBERTUS: I think I can clarify this. The
23 handout errata sheet says that the current draft list
24 update recommends the addition of 24 water bodies, 15 new
25 pollutants, period. New sentence, it also recommends the

1 addition of 4 new pollutants to previously-listed water
2 bodies.

3 So the distinction about the 4 new
4 pollutants pertaining to the previously-listed water bodies
5 is different from the 15 new pollutants that pertain to
6 newly-listed water bodies.

7 CHAIRMAN MINAN: Thank you. Are there questions?

8 MS. BLACK: I have a question. It's probably for
9 Mr. Robertus, but what's the plan for getting out this
10 information at least to -- aside from the website and aside
11 from the workshop and public hearings, so people understand
12 in the entire region what's happened in terms of water
13 quality?

14 MR. ROBERTUS: That's an excellent question.

15 MS. BLACK: How are we going to do this because we
16 have no options with regards to any kind of say except to
17 have all of these recommendations? But when you take a
18 look at the combination of the 1998 -- and then I kind of
19 went and realized that you had put them together much like
20 you have done here. It's kind of scary.

21 I think it would be really important for the
22 people of the region to understand, and they may take a
23 little bit more time, then, to come out and pay attention,
24 especially in their particular pockets where -- as you
25 said, where the waters run in together because now we have

1 combinations of situations that were not even detected back
2 in 1998.

3 MR. ROBERTUS: Well, the fact is that this 303(d)
4 listing process has also gone exponential. There are a
5 number of reasons for that. First and foremost I think is
6 the lack of information about the ambient water quality
7 that's been historically available to us.

8 We now have the ability with geographic
9 information systems and technology to synthesize
10 information from written format and graphic. This is the
11 first presentation that we've actually used with this
12 capability. And with new staff such as Mr. Smith, we're
13 able to get more information, process it, and put it into
14 this report.

15 And I would invite you to look at Table 3.
16 I think Table 3 is extremely useful because it gives you,
17 among other things, a number of sampling points. So we're
18 able to give you a quantitative and qualitative summary.

19 There's been an explosion of interest about
20 ambient water quality. We still don't have the resources
21 to do much about it, but that doesn't slow down the public
22 interest.

23 Secondly, there's been an explosion of
24 concern due to the TMDL process. The public interest in
25 this process, I'm still astounded that there are people

1 that don't know what it means. And in the public speaking
2 that I've done in the last six months, I always ask that
3 question. But increasingly people are aware of that.
4 That's the end point we'll be dealing with most likely in
5 these cases.

6 And then the third thing is that from my
7 personal perspective, we're continuing to educate kids.
8 And increasingly through the education process and public
9 outreach, more and more people are aware of what this list
10 is, and they're concerned about the condition of the water
11 quality in their watershed.

12 The watershed movement has spawned a great
13 deal of knowledge coming together with people who know such
14 things and many are here present today to speak. They're
15 communicating to people, and this is very much on people's
16 minds. And I think we saw it in the recent elections here
17 in our region.

18 So there are other things that are
19 happening, but I'll just summarize by saying when I began
20 working for the Regional Board almost six years ago, the
21 303(d) listing process was a nonevent. In 1998 it was a
22 huge event. While now I don't know what the proper
23 adjective is. It's gigantic at this point.

24 It's compounded -- I guess is a good word --
25 by the dilemma we have in not having clear cut instructions

1 from higher levels of government on how to do it. That's
2 why we are not the -- the Regional Board has not been
3 requested to take action.

4 So we've given this also incredible
5 resources in proportion to the resources we have of staff.
6 Our best and brightest people have been working on this
7 very hard.

8 MS. BLACK: One of my suggestions would be,
9 Mr. Robertus, is to take a pen to paper and put it on, then
10 piece it together to inform people that the process is
11 going on. I mean, all the good work, and I do know that,
12 but my question and maybe comment is that it could be all
13 kinds of good work that the staff is doing, but it's out
14 there of those people who have a self-interest. But some
15 people really do care but just don't know about it. They're
16 not plugged into Surfrider or some of the variety of
17 environmental organizations.

18 And so an editorial or sitting down with an
19 editorial board, not only the Union Tribune, but some of
20 the smaller papers to get some support for this. And then
21 they become kind of third-party advocates for our region.
22 And I think that's going to help with the understanding.
23 I mean, I would really encourage staff to do that, I think
24 third-party advocacy on behalf of the staff here and behalf
25 of the Board because we're really not able to do that at

1 this point. So we do need some of that.

2 MR. ROBERTUS: I clearly understand what you're
3 saying. We are trying to reach as many people as we
4 possibly can. There are a lot of people who still simply
5 don't care even when they become aware of this, but
6 principally we're encountering two kinds of people; people
7 that want water bodies listed because they think that's the
8 only way that the pollutant problem that they perceive or a
9 problem will be resolved or addressed, or people who do not
10 want water bodies listed because they feel they'll have to
11 bear the cost and they'll become a target as a polluter.

12 We have to decipher which water bodies are
13 impaired by what pollutant and then take the action. And
14 then in the process, we get a lot of comments. Along the
15 way we're increasing and informing the public.

16 CHAIRMAN MINAN: Mr. Baglin, do you have some
17 questions?

18 MR. BAGLIN: Mr. Smith, I have some things that are
19 just notes that I'd like you to look at. And forgive me
20 I'm very -- reaching along this, looking at Orange County
21 going north on some questions. It starts on page 17 which
22 is the 1998 303(d) water bodies listings.

23 And the first one which is 901.12, water
24 bodies Laguna Beach, coliform, extent of impairment .15
25 miles. It's my understanding that that is a lateral

1 distance perhaps at the mouth of Laguna Creek.

2 MR. SMITH: That is correct. We are changing that
3 extent of impairment to be .2 miles in either direction of
4 that, and it's based on an epidemiology study that came
5 from Santa Monica. The .15 was the 1998 listing.

6 MR. BAGLIN: As that comes up, one would then think
7 that -- what fascinates me by this here is down at
8 Aliso Creek is that I guess it's because of lack of
9 monitoring, we do not include Laguna Creek as being an
10 impaired water body even though we are declaring that which
11 is right off shore which is being contaminated by Laguna
12 Creek an impaired water body. So the source situation is
13 not being looked at even though we're hitting where it's
14 finding its place onto the beach.

15 Also, as you go up Laguna Creek, the head
16 waters of Laguna Creek and Laguna Canyon is what's referred
17 to as Laguna Lakes. Most people from any other part of the
18 country would call them ponds or mud holes, but they are
19 the only two natural lakes there are in the County of
20 Orange, and they're numbered 1, 2, and 3.

21 And there is significant data that has been
22 collected for about the last five years on water quality on
23 those lakes, and I think that should you receive those from
24 the County of Orange, you would find that they are quite
25 impaired and have become dead when they used to support --

1 at least lake No. 3 -- quite a fishery.

2 Lake No. 1 is truly an ephemeral lake, 2 is
3 ephemeral, 3 has been a body of water that the people of
4 Laguna used to fish from, but urban runoff has contaminated
5 it greatly and reduced oxygen levels and so on.

6 And Item No. 901.13, Aliso Creek coliform,
7 as I look at that, 0.01, that also is a lateral measurement
8 across the mouth of Aliso Creek?

9 MR. SMITH: The mouth of Aliso Creek is listed, and
10 we're again changing that extent of impairment to .2 miles
11 in either direction. And we also -- the lower one mile of
12 the creek itself was previously listed for bacterial
13 contamination. We are stretching that out to be a longer
14 extent.

15 MR. BAGLIN: On 901.13 it states "Aliso Creek mouth
16 of Orange." Is that actually mouth of Aliso Creek rather
17 than mouth of Orange?

18 MR. SMITH: I believe that is a typo that needs to
19 be corrected.

20 MR. BAGLIN: Thank you. And then moving on to
21 page 24 which is recommended additions, 303(d). You just
22 mentioned going all the way up Aliso Creek, and I really
23 appreciate staff has gone into this amount of study and
24 recognized the studies that have been taking place for
25 several years and genuinely supports your decision.

1 At the bottom of that, 901.14 Dana Point
2 Harbor a new listing, and it has to do with dissolved
3 copper. This comes as a total shock since for quite some
4 time we thought that Dana Point Harbor was not suffering
5 from the same problems as San Diego are.

6 A critical factor on this is that there is a
7 major renovation plan on the books right now for Dana Point
8 Harbor which intensifies the use considerably around that
9 harbor, and the County of Orange should be very much aware
10 of this listing because it could have a major impact upon
11 their planning for the BMPs that they have to do because no
12 one anticipated this at all. This is a big surprise.

13 MR. SMITH: Point taken. We're trying to inform
14 them.

15 MR. BAGLIN: And then my last group of comments --
16 this is page 29, line No. 2, 901.12. It's the Laguna Beach
17 hydrological subarea, HSS?

18 MR. SMITH: HSA.

19 MR. BAGLIN: The beach named is Laguna Beach rather
20 than Doheny State Beach?

21 MR. SMITH: I am not quite familiar with that.

22 MR. BAGLIN: It's something you might want to look
23 into.

24 MR. SMITH: It's not Doheny; it is Laguna.

25 MR. BAGLIN: It is Laguna. And the impairment

1 location -- if we're dealing with that one -- would be
2 Laguna Creek. If we are talking about Doheny Beach -- and
3 it's the confusion on the subarea -- Doheny Beach does have
4 a substantial problem and is contaminated most of the time.
5 It could be that it's just because it falls under that
6 general heading that that should be corrected. But if you
7 could look at it and see what it is.

8 MR. SMITH: Certainly.

9 MR. BAGLIN: And then on the next one, line No. 4,
10 901.13 Aliso, we have down there Capistrano Bay District.
11 If you could look into that one also since the beach name
12 at Aliso is Aliso. And then the same thing on No. 5 where
13 we have 901.13 Aliso, and it comes out to be Capistrano
14 again. So if those could just be checked for accuracy.

15 MR. SMITH: Certainly.

16 MR. BAGLIN: There were three general questions
17 that I looked at, and it seemed to come up in our area.
18 And I'd like to know if it's typical of all regions, and
19 that is we have stumbled a few times on establishing
20 potential Recreation 1 use, beneficial use. Do all nine
21 regions use potential Rec. 1, because Rec. 1 is basically
22 200 and Rec. 2 is 2,000, and potential is something in
23 between or one or the other?

24 MR. SMITH: In our situation here in this region,
25 we treated potential as a designated beneficial use. It

1 was our understanding for any legal purposes they were the
2 same.

3 MR. BAGLIN: As I understand, the Clean Water Act
4 basically talks about swimmable and fishable, and that
5 leads us oftentimes to a default position of Rec. 1. And
6 so I'm just questioning at this time I have found potential
7 Rec. 1 to be a very difficult thing to enforce and hold
8 people accountable to. So as we move forward in this, I
9 continue to question that. Is it being partially pregnant?

10 MR. ROBERTUS: Probably. It's been in the Basin
11 Plan for a number of years. I'd have to do some research
12 to find out when that designation was actually adopted by
13 the Board, but it's something that would require a Basin
14 Plan amendment -- excuse me, 1972. Art Coe, my corporate
15 memory of this is...

16 MR. BAGLIN: I'm sure that there was great wisdom
17 behind it in 1972. As we have gone to 2001, I suggest that
18 we might look at it and see because it's something that
19 causes us a problem as we're out in the field on which one
20 is it.

21 MR. ROBERTUS: I know that I've been troubled by
22 that, and my concern was somewhat alleviated because the
23 waters where that was an issue downstream Rec. 1 was
24 clearly the beneficial use, the highest beneficial use as
25 far as water quality, and all the waters tributary to those

1 swimmable waters were designated potential.

2 And I don't know how you could be downstream
3 of any stream in our region where the water quality
4 decreases as you go downstream and suddenly end up with
5 Rec. 1 at the beach. So that's how I've reasoned it out.

6 MR. BAGLIN: I totally agree with you. It's just
7 to me, I guess, maybe time to dump potential Rec. 1, and it
8 should be either Rec. 1 or Rec. 2.

9 MR. ROBERTUS: I'll put that on the list for our
10 triennial review of the Basin Plan.

11 MR. BAGLIN: That means once every third decade.
12 This is following up to what Laurie said, and it strikes me
13 as really being important that the community understand.
14 It's not just the environmental community, but those who
15 are regulated by this board. And that is to me what I've
16 gotten, 303(d) equals TMDL. TMDL typically equates to
17 usual suspects.

18 And those are the people who are already
19 being strangled by our regulations very often, and on a
20 TMDL process we go back to the usual suspects and strangle
21 them even more. And so I think that anyone who could be
22 impacted by this is clearly aware.

23 Especially on the new water bodies, I'm
24 concerned about -- for instance, as I brought up Dana Point
25 Harbor, this is I think a total surprise to them, and they

1 need to know what this means because it could impact the
2 improvements they have in the pipeline right now for that
3 harbor, and those are many years into the making. So I
4 would hope that they would be there.

5 Another one which I would hope staff would
6 look into on the 1998 listing is Emerald Bay, a private
7 community which is not a part of the City of Laguna Beach,
8 but we share the same zip code. They have gates, we don't.

9 They're listed on the list, and I would hope
10 that we would be in contact with that private -- it's a
11 special district, to let them know that they are on the
12 list, and they should be aware of it, and what it means
13 because I have my doubts if they even know.

14 MR. SMITH: Certainly. We'll follow up on that.

15 MR. BAGLIN: And on the TMDL situation as we were
16 talking about it, John, do you have a feel as to what
17 percent of our staff resources are now devoted to the TMDL
18 efforts?

19 MR. ROBERTUS: The last fiscal year was about
20 3 percent; this year it's about 10 percent. And we did
21 have some recent vacancies, but overall it's about
22 10 percent of our total resources.

23 MR. BAGLIN: Which is a fairly significant group.

24 MR. ROBERTUS: Yes, it is.

25 MR. BAGLIN: So as I'm looking at this, it's not

1 only the dischargers, the environmental community, but our
2 ability to do our job is controlled so much by what's on
3 this list. It dedicates a huge part of our work force. I
4 think we need to be aware of it and the community does.

5 And so, John Smith, thank you very much for
6 your patience as I went through this.

7 MR. SMITH: You're welcome.

8 CHAIRMAN MINAN: Mr. Smith, I have a couple of
9 observations, too. But are there other board comments
10 before I share my thoughts?

11 As I look at Table 3 of the recommendations
12 to the 303(d) list, I am struck by the fact that there
13 doesn't seem to be any standard that I am able to detect
14 with respect to the total number of samples done with
15 respect to the water quality segments that are being
16 identified. It ranges from a number of 6 samples to I
17 think 250 samples. So that's troubling to me, but there
18 doesn't appear to be any coherent strategy for sampling.

19 Secondly, there doesn't seem to be a
20 coherent strategy with regards to the monitoring dates.
21 For example, in the Agua Hedionda Creek listing on
22 Table 3, the monitoring dates are 6/98 through March of the
23 year 2000. How do we know events have not changed from
24 March 2000 so that it would be inappropriate for us to
25 identify this particular water quality segment as being

1 impaired at the current time?

2 So I'm troubled by two aspects. One is the
3 lack of consistent sampling standards, and then, secondly,
4 the monitoring dates are widely at variance with each
5 other, some of them being older than others. I don't know
6 whether you care to comment on that.

7 MR. SMITH: Certainly. You hit on a very good
8 point. We, too, have struggled with the fact that there is
9 no criteria out there, no rigid or numeric numbers that we
10 need for minimum number of sample size, minimum number of
11 exceedences.

12 Our approach is what we call a "weight of
13 evidence approach" where we try to gather all available
14 information and assess it, weigh it appropriately, and try
15 and come to some understanding of what's happening in the
16 water body.

17 In general, everything you see in Table 3 we
18 are fairly confident that that is impaired, beneficial uses
19 are impaired, and water quality is impaired. If we had any
20 doubts or any concerns, we did not list it. The State
21 Board and EPA as well as our staff here at the Regional
22 Board are struggling now and trying to come up with some
23 criteria that we can use in the future. That has been a
24 very huge issue that I'm glad you bring up.

25 Secondly, to the monitoring dates, what we

1 needed to see was clear evidence of impairment. When that
2 took place was simply set as a practical consideration.
3 Per State Board's request, we only looked at data generated
4 after July of 1997 with the understanding that anything
5 before that was probably assessed for 1998. And we set a
6 practical deadline of May 15th just to give us the time
7 to -- May 15th 2001, excuse me -- to give us the time to
8 re-evaluate the new data.

9 So if during that time we were able to show
10 clear impairment of beneficial uses and of water quality,
11 then we did make the listing. This brings up the point
12 that very often a lot of the data we're reviewing was never
13 really designed to address the questions we're trying to
14 answer. If we're looking at permit compliance data, that
15 was designed for a completely different issue.

16 Ambient monitoring is something we
17 definitely need to correctly address this topic, and
18 hopefully we're starting to move in that direction.

19 CHAIRMAN MINAN: Thank you. Any other questions of
20 Mr. Smith?

21 MR. ROBERTUS: I'd like to expand on Mr. Smith's
22 comments. I think this is going to present us a very
23 interesting challenge. It does now and it will increase.

24 The dischargers have traditionally been
25 providing us information because of their monitoring

1 requirements and their effluent into receiving waters. And
2 as was stated, that information there may not be the right
3 information to use.

4 We have an abundance of it, and it takes a
5 lot of time to dig that out of the files. Increasingly,
6 Municipal Storm Water Permits provide a lot of various
7 provisions.

8 Secondly, there have been some new laws
9 passed where we used to have muscle watch and toxic
10 substance -- it's called the Toxic Hot Spot Program -- that
11 were rather well-designed, and they did provide some good
12 information for some listings. But they fell short of the
13 mark, so as a result we have some new programs. The
14 Assembly Bill 411, the Wayne bill, has provided incredibly
15 valuable information about water quality in the areas where
16 people swim.

17 The problem with that data is that there are
18 no equations. I spoke Friday with the executive officer in
19 Region 4 in Los Angeles and Region 8, the Santa Ana board,
20 and the three of us discussed how many beach closures
21 before you have an impairment at a given beach.

22 Of course, we don't know the answer to that.
23 So I suggested it would be nice if we had some consistency.
24 Well, we can't pick a number and say, well, the beach is
25 closed 40 percent of the time or 10 percent. We don't have

1 that answer. Also, some other programs like the Source
2 Water Assessment Program, there are programs out there that
3 provide information that we now have more resources to go
4 look at.

5 And then the final comment I'll make is
6 there's a phenomenon that I'll call the Stream Team
7 phenomenon. In fact, in our newspaper there was coverage
8 on that I believe yesterday showing high school students --
9 they may have been college students -- sampling water in
10 one of our water bodies.

11 We're going to increasingly have information
12 brought to us by citizen monitoring groups, and there will
13 be full expectation that that information will be put into
14 our files and records with equal weight with information
15 that came from certified labs and was obtained from
16 dischargers at the discharger's expense, and they'll expect
17 us to take that information and use it as hard evidence
18 with impairment.

19 I think that will be countered by efforts by
20 other people to go out and get evidence that beneficial
21 uses are supported. So I think it will get interesting.
22 The Stream Team is a sponsored program. I am not certain
23 as your executive officer how we're going to incorporate
24 that information into our files. I don't know yet. That's
25 all I want to say at this point.

1 CHAIRMAN MINAN: Thank you, Mr. Smith. Any other
2 questions? I would like to take a brief recess. I know
3 that we're in the middle of an agenda item, but I see that
4 one of our distinguished guests from Sacramento has
5 arrived, and I would like to beg the indulgence of the
6 public speakers to just take a minute or two to introduce
7 Mr. Art Baggett who is the chair of the State Board.

8 (Whereupon, a brief presentation was made
9 which was separate from Item 10.)

10 CHAIRMAN MINAN: I have four speakers on Agenda
11 Item 10. The first is Mary Jane Fowley. I don't know
12 whether she is still here.

13 MS. FOWLEY: I'm here.

14 CHAIRMAN MINAN: I couldn't see you. And let me
15 just indicate that Mary Jane served with Mr. Baggett and
16 Mr. Silva and just recently has stepped down from the State
17 Board. So we're delighted to have you also with us today.

18
19 MARY JANE FOWLEY,

20 MS. FOWLEY: Thank you. I'm here today to
21 represent the Southern California Alliance of POTW, SCAP.

22 I am a regulatory advisor on a consulting
23 basis with them. The executive director couldn't come down
24 today, but he wanted to talk about the 303(d) listing
25 process, not anything on the list.

1 And so I'm not going to go through the
2 letter, because -- well, I'll just tell you that SCAP has
3 55 member agencies serving some 16 million residents of
4 Southern California. And they're very active in water,
5 biosolids, and air quality, and they are the usual
6 suspects.

7 And they have a very vested interest in
8 303(d)s and TMDLs because they want to make sure that their
9 nonpoint source partners are involved, and that they do not
10 get strapped with carrying a load on an impaired water
11 body. And that's a legitimate goal.

12 I'm going to read for you -- I took the
13 letter that they wrote in the summer to different regional
14 boards. SCAP is under the influence of five different
15 regional boards. They came up with what they'd like to see
16 in the listing process.

17 And for the record, I don't think I'll be
18 able to attend your November 29th meeting. I'll be at
19 AQUA. But these are some of the things that they think
20 would make a better listing process, and I just want to
21 have them as a comment on today's record. And it's on this
22 little paper that says "draft."

23 I'll try to go through this really quickly,
24 but I feel obligated to speak of this. They want -- the
25 water quality assessment process should be developed. They

1 like the two lists; the watch list and the action list that
2 came out of a document that was developed in July of 2001
3 by the National Research Council which is an arm of the
4 National Academy of Sciences.

5 And in that report, they explain the
6 difference between the watch list and the action list, and
7 it isn't to put something in a parking lot for a long time.
8 It's just to prioritize the TMDLs and where there needs to
9 be more data and more understanding of what's happening,
10 that they have another list that they can utilize until
11 they have all the information they need.

12 The basis and process for listing and
13 delisting, they want to be more transparent. You will find
14 a lot of people will be surprised at the short time frame
15 they have to comment. This is an unusual process this
16 time. People are not used to this process. They're not
17 used to being able to make their comments and get them
18 responded to at the regional level.

19 And I do want to -- it isn't on this list,
20 and I knew I would stray. I'm going to go back to the
21 list. But I think something that I found being out in the
22 community is just like the environmental groups don't have
23 the resources to go to Sacramento to participate in a lot
24 of the activities, the local dischargers unless they're a
25 very large agency do not have the travel money.

1 So this process is frustrating for them to
2 understand how they're going to be able to participate,
3 evaluate, and analyze what's going on if they can't go to
4 Sacramento. It will be a many-day activity because this is
5 nine regions with these lists, and they have hotel
6 expenses...

7 And so I hope that the State Board -- it is
8 the appropriate time to pitch this -- will consider coming
9 down and doing regional meetings so that people can be
10 accommodated and can come and understand the process. And
11 the main reason is to get people to have acceptance of the
12 assessments. And once you get acceptance of assessments --
13 which is a hard thing to say in one phrase -- you get over
14 the data battles, and you can move on to the TMDLs.

15 And if you had participated in any TMDLs,
16 that is a very negative way to start off. So to me the
17 303(d) listing process is so critical. I'm going to get
18 back to the list.

19 They would like to have -- so they want
20 transparent. A lot of this comes from the draft guidance
21 of EPA that's on the street called COM, consolidated
22 assessment methodology listing process. And they have a
23 recommendation of a transparent process.

24 They talk about explanation of the following
25 factors: data quality, age, degree of confidence, degree of

1 exceedences. They talk about a description of the
2 procedures for collecting and using ambient water quality,
3 a description of methods and factors to develop a
4 prioritized schedule for TMDL development, a description of
5 factors for putting waters on the watch list, the action
6 list, and to delist waters -- some regional boards are
7 delisting in this process, Santa Ana and L.A. are delisting
8 some sites -- a requirement for the development of fact
9 sheets that explain the proposed listing and delisting
10 including constituents of concern, the data used, the water
11 quality standard, and the basis for the decision to list or
12 delist.

13 They would like to see adopted water quality
14 standards used. It has been my observation that there are
15 gaps in water quality standards that are needed when
16 they're doing these assessments, so they have to use their
17 best professional judgment. That is tough to reconcile.
18 You know, is that underground regs., what is that? So
19 that's something that the State Board can work on when
20 they're looking at the methodology for doing this.

21 It's absolutely essential to enable informed
22 public review -- the public review process is really
23 inadequate this time locally -- and they'll go a long way
24 to instilling confidence in the process and analysis
25 prepared by the Regional Board.

1 They would like a description of and a
2 reference for the water quality assurance procedures. And
3 that would be very important for the local volunteer
4 monitoring, what the QA/QC was, the quality assurance.
5 Because when you get into this process, as you probably
6 have read in other venues, this can be a \$250,000 price
7 tag. Some go up to \$1 million.

8 So that's why this process, the quality of
9 the data is really incredibly critical. The Regional Board
10 should define the quality data requirements, how they
11 utilize and interpret data to make decisions about whether
12 the water body is impaired or attaining water quality
13 standards.

14 And in the listing criteria, it's kind of
15 fun for me to participate in some of these committees
16 because many of them are scientists and Ph.Ds, and I don't
17 understand all this, but I love listening to them debate
18 what makes for good criteria.

19 Consideration of spatial/temporal at several
20 scales and hydrologic variations and their effect on water
21 quality, for uses related to aquatic life, consideration
22 that biological indicators should be given a greater weight
23 than pollutant concentration. Example, I heard something
24 this morning that some fish do live in waters that we would
25 think polluted, and they adapt to it. And so biological

1 indicators might be more valuable than the pollutant
2 concentration.

3 To the extent that some waters may be
4 unimpaired, may have unimpaired beneficial uses even though
5 some chemical criteria had been exceeded. Water quality
6 objectives with criteria that are based on national
7 guidance may not be reflective of a local on-site specific
8 condition.

9 I can't even explain the next one, so I'm
10 going to skip it. I don't know what idiotrophic is. The
11 listing process should eliminate subjective criteria such
12 as significant amount observed. That is not a scientific
13 explanation.

14 The listing process should recognize control
15 measures already in place. I noticed that L.A., they came
16 and visited the SCAP/L.A. water committee. They are
17 recognizing a TMDL or another control going on in their
18 region, and, therefore, feel that some process is taking
19 care of it and they have it listed if that's done in an
20 approved way by the Regional Board.

21 That would be like if they were under permit
22 requirements, a cleanup and abatement order, cease and
23 desist, a time schedule, or water management plan that is
24 enforceable, includes a time schedule for compliance with
25 objectives.

1 And the sample size is very interesting.
2 Some regional boards are using 10 samples. Some are using
3 more. There's a national -- I'm almost certain that COM
4 speaks up to 30 samples. That's a big debate that I'm sure
5 the State Board will take into consideration when they look
6 at the use of valid data sets.

7 So I know this wasn't very interesting, but
8 it's just the best thoughts of these people who have to
9 deal with this information. I think that yesterday we had
10 a meeting in Orange County. Jimmy wasn't able to attend,
11 Jimmy Smith. But Hope Smythe from Region 8 came, and we
12 were talking about the different ways the different regions
13 are approaching this this time.

14 And their message was -- I asked them, well,
15 what do you want me to say? And they said we want
16 consistency. We don't want to be disadvantaged. We don't
17 want to have a beach site closed in our region for, you
18 know, seven days of posting and in another region three
19 days, and another region ten days. They're really looking
20 for consistency.

21 And I think that the thing that I hope comes
22 back to the region is that the next go-around you will be
23 having -- science and public policy must always intersect,
24 and I think that some of the public policy in this process
25 is being short-changed. And I understand why, and I just

1 hope that the public has a chance through your workshop to
2 comment. L.A. is going to do a response to comments. And
3 that's about all I have to say.

4 I wanted to say something on -- can I say
5 something on Rec. 1 that I studied over the weekend? I've
6 become this researcher. I just want to say that in L.A.
7 tomorrow they're doing a Basin Plan amendment on their
8 bacteria objectives, and it relates to Rec. 1.

9 And one of the things that they are looking
10 at, it appears to me that they're setting Rec. 1 standards
11 universally throughout the region for the beach standards.
12 And EPA's 1986 guidance for ambient water quality allows a
13 tierred approach.

14 That would be, you would look at
15 heavily-used areas, moderately-used areas, and
16 infrequently-used areas. You would look at risk assessment
17 with that and the cost. And the January 2001 protocol for
18 pathogen TMDLs allows for a tierred approach where you look
19 at heavily used and moderately used. And I think that that
20 is a reasonable approach. I think that that will help with
21 the cost. There's so many costs in so many areas that you
22 have to have some flexibility.

23 So it's something that you'll probably be
24 looking at. Everybody is supposed to adopt bacteria
25 objectives soon. The State Board and EPA -- I think EPA

1 in my investigation will continue with the tierred
2 approach. I don't know what the State Board will do in
3 their Ocean Plan, but it's coming up.

4 So it's fun to be on this side. It must be
5 odd for Art to see me standing on this side. But I'm
6 enjoying being a consultant and learning what people go
7 through. And the whole point for me personally is good
8 practical fair regulation. And so thank you for letting me
9 speak.

10 CHAIRMAN MINAN: Thank you, Mary Jane. We
11 appreciate your visiting with us and sharing your thoughts.
12 I do have just a brief comment before we get to the other
13 speakers. Normally speakers on agenda items like this are
14 limited to three minutes. But given the importance of this
15 subject -- and I think Mary Jane pointed it out -- this is
16 really the first time that the public has had an
17 opportunity to share with us their views, because our role
18 in this process has been not as direct as it has been in
19 other matters.

20 I think it's important for us to be
21 educated, so I took some license in allowing you to speak
22 for three and a half minutes, Mary Jane.

23 MS. FOWLEY: Thank you.

24 CHAIRMAN MINAN: But I would ask that to the extent
25 that it's possible for the additional speakers to be

1 cognizant that we do have other agenda items, that would be
2 helpful. Mr. Lloyd, David Lloyd?

3 MR. ELLIOTT: David is unable to attend this
4 afternoon. I will speak for him. I'm on your list as
5 Craig Elliott if that's next.

6 CHAIRMAN MINAN: Okay. Mr. Craig Elliott, you are
7 on the list but before I ask you to come forward, I am told
8 that our stenographer needs to rest her hands and refresh
9 her paper. So we'll take a 10-minute recess.

10 (Whereupon, a brief recess was taken.)

11 CHAIRMAN MINAN: If I could ask you to take your
12 seats, and I would like to continue the public comment
13 portion of Agenda Item 10.

14 And once again to the extent practicable, I
15 would like to ask you to try to make your comments within a
16 three-minute period, recognizing that if you do stray, I
17 will liberally interpret the passage of the atomic clock
18 time. Mr. Elliot, would you please state your name for the
19 record.

20

21 CRAIG ELLIOTT,

22 MR. ELLIOTT: I am Craig Elliot, resident of
23 Carlsbad, California on the north shore of Agua Hedionda
24 Lagoon. I also speak for David Lloyd who is unable to stay
25 for the afternoon.

1 I am a volunteer representative of the
2 Agua Hedionda Lagoon Foundation and the Southern California
3 Caulerpa Action Team, a coalition of about 11 agencies,
4 federal, state, and local agencies, and private
5 corporations such as Cabrillo Power.

6 I'm here specifically to request that the
7 Regional Board staff add the name of Agua Hedionda Lagoon
8 to the list of impaired water bodies. The lagoon has
9 suffered the invasion of a very, very noxious invasive
10 marine weed by the name of Caulerpa taxifolia. That's
11 listed by the EPA as a nonpoint source pollutant. The
12 citation is in the National Invasive Species Management
13 Plan which can be found on the website
14 www.invasivespecies.gov.

15 The Caulerpa action team has been attempting
16 to eradicate the Caulerpa taxifolia in the eastern basin of
17 Agua Hedionda Lagoon for a little over a year. We've been
18 quite effective in killing the weed as we find it, but we
19 know we haven't found it all.

20 The restriction on the beneficial use of the
21 lagoon deals with recreational uses of that lagoon, and
22 some restrictions have been placed on the lagoon already in
23 the form of prohibiting fishing in certain portions of the
24 lagoon, prohibiting boat operations in certain portions of
25 the lagoon.

1 There is a meeting going on as we speak now
2 between representatives from SCCAT and the city council of
3 the City of Carlsbad requesting additional restrictions on
4 the use of the inner basin of the lagoon.

5 I speak for David Lloyd who is a legal
6 representative for Cabrillo Power, the owners and operators
7 of the Encina Power Station which is located on the western
8 basin of Agua Hedionda Lagoon. And his corporation
9 supports our request to add Agua Hedionda Lagoon to the
10 list of impaired bodies.

11 The foundation, SCCAT, and Cabrillo Power
12 all would suggest that that would be to the advantage of
13 the users of that lagoon if we list it as impaired. Thank
14 you.

15 CHAIRMAN MINAN: Thank you, Mr. Elliot. I
16 appreciate you taking your time to share your thoughts.
17 Mr. Pezzoli?

18
19 KEITH PEZZOLI,

20 MR. PEZZOLI: Hello, I'm Keith Pezzoli. I teach at
21 the University California San Diego in the Urban Studies
22 and Planning Program and have been for 14 years. I'm also
23 the PI of UCSD's new Super Fund Basic Research Program
24 Outreach Core. And so it's my job to help link UCSD's
25 environmental science to policy and planning.

1 So obviously the TMDL process that you're
2 facing here is a daunting task, and we'd like to try to
3 help. So I'm making an observation about our resources and
4 how we can help in this TMDL process.

5 We have a close working relationship with
6 Scripps Institution of Oceanography and the San Diego Super
7 Computer Center. One of the projects that we're working on
8 right now is an integrated geographic information system
9 for the transborder region. We have now for the first time
10 an integrated base map that shows the topography and the
11 bathymetry of the offshore coastal zone that runs from just
12 below L.A. down to Ensenada.

13 This is a good foundation map that we'll be
14 able to use in an interactive fashion. So we're thinking
15 about presenting, for instance, the information about the
16 impaired water bodies in a web-based environment that the
17 public can go to and they could click and see where the
18 impaired water bodies are and get information about these
19 impaired water bodies.

20 So there's some very state-of-the-art
21 information technology available to help communicate the
22 importance of this science, the challenge that you're
23 facing here, to the public as well as for research.
24 Essentially, our project is a research-driven one.

25 And I'll just end with this: we have an

1 opportunity to seek in-house funds from the UC system. The
2 University of California Office of the President has
3 \$100,000 available for their water quality program.

4 And I'm submitting a proposal together with
5 Steve Miller and other colleagues in the UCSD campus to
6 hire somebody full time over the next two years to help us
7 do an integration of distributed regional environmental
8 data. And I'm talking about including, you know, the
9 Mexican side of the border. As you know, we share a
10 watershed in this region.

11 And I'd like to explore a way of actually
12 getting a collaborative partnership going with this board,
13 as well as the other partners, in trying to bring the
14 science into the TMDL process as best we can utilizing, as
15 I said, the resources of the Super Fund Basic Research
16 Program and funding we already have for building websites,
17 for building, you know, information integration and
18 sharing capabilities and things like that.

19 So thank you for the opportunity to share
20 that perspective.

21 MS. BLACK: Are you working at all with anybody in
22 Secretary Nichols' office on this?

23 MR. PEZZOLI: Not yet. I say "not yet" because I
24 have a hunch that we should be.

25 MS. BLACK: I have a feeling that not only this

1 board, but knowing what I know about their priorities and
2 the kind of public partnership that they want to provide, I
3 mean, I could see a nice little marriage there.

4 MR. PEZZOLI: Very good. Thank you for sharing
5 that.

6 CHAIRMAN MINAN: Thank you, professor. I have no
7 additional speaker slips on Agenda Item 10. And since this
8 was an informational status report, no action is warranted
9 on our part. So I would like to close Agenda Item 10
10 and move to a discussion of Agenda Item 11...

11 (Whereupon, Agenda Item 10 was concluded.)
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REPORTER'S CERTIFICATE

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)

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