

**HEARD BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In re:

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

TRANSCRIPT OF PROCEEDINGS

Torrance, California

February 5, 2004

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2 STATE WATER RESOURCES CONTROL BOARD
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5 In re:)
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6 Public Hearing for Water Quality)
Control Policy for Developing)
7 California's Clean Water Act)
Section 303(d) List and Draft)
8 Functional Equivalent Document)
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15 TRANSCRIPT OF PROCEEDINGS, taken on behalf
16 of the State Water Resources Control Board, at
17 3330 Civic Center Drive, Torrance, California, at
18 10:05 a.m., on Thursday, February 5, 2004, before
19 KATHRYN L. MAUTZ, CSR No. 11539, RPR.
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24 Reported by: KATHRYN L. MAUTZ, CSR No. 11539, RPR
25 Job No.: 04-26018

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APPEARANCES:

For the State Water Resources Control Board:

PETER S. SILVA

NANCY H. SUTLEY

MICHAEL LEVY

CRAIG WILSON

LAURA SHARPE

PATRICIA GOUVEIA

1 Torrance, California; Thursday, February 5, 2004

2 10:05 a.m.

3
4
5 MR. SILVA: Okay. Good morning, everybody. Why
6 don't we get started.

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

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

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

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

1 Michael Levy.

2 California Water Code Section 1319.3(a)
3 requires the State Water Board to develop guidelines
4 describing the process by which the State Board and the
5 Regional Water Quality Control Boards shall comply with
6 the listing requirements of the Clean Water Act Section
7 303(d) list. The policy will ultimately establish a
8 standardized approach for developing the California
9 Section 303(d) list.

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

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

22 In today's hearing, the order of procedure
23 will be a brief staff presentation, followed by
24 testimony from interested parties. If you haven't
25 already done so, if you want to speak, please fill out a

1 blue card. We will also -- if you'd like, we also want
2 to receive written comments regarding the proposed
3 policy.

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

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

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

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

25 Staff will make the revised policy available

1 to interested parties at least 15 days before
2 consideration by the Board. Interested parties should
3 notify the date and place of future Board workshops and
4 Board meetings where the proposed policy will be
5 considered for adoption.

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

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

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

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

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

22 In complying, California has developed
23 successive lists of waters not meeting water quality
24 standards by any league since 1976.

25 After 1996, public attention increasingly

1 focused on an important consequence of the
2 Section 303(d) listing, or the development and
3 implementation of total maximum daily loads, or TMDLs.

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

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

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

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

25 The purpose of the FDT is to present

1 alternatives in State Board staff recommendations where
2 the policy is to guide the development of the
3 Section 303(d) list.

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

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

18 The FED discusses -- and the draft policy
19 contains -- a weight of evidence approach that uses
20 single and multiple lines of evidence, alternate data
21 analysis procedures, and the option for regions to use
22 alternate data exceedance frequencies in establishing
23 this list. The FED also recommends approaches for the
24 evaluation of numeric data consistent with the
25 expression of water quality objectives or promulgated

1 criteria.

2 Lastly, the FED assesses the potential adverse
3 environmental impacts of the proposed policy.

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

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

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

17 MR. SILVA: Thank you, Greg.

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

22 And again, if people before you have already
23 stated what you wanted to say, please say, "I agree with
24 so-and-so." You will have a chance for written comments
25 also.

1 So with that, what I would like to do is --
2 the environmental community has asked to go together, so
3 why don't we go through the cities first, city and
4 county reps, and then we will end with the environmental
5 community reps.

6 First we have John Pratt.

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

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

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

24 We are already reducing service levels in
25 several areas in order to pay for strong water programs,

1 and our staff has projected city expenditures of over
2 \$2 million over the next several years in order to meet
3 the requirements in our permit. We are, therefore,
4 mindful of the need to examine the relationship between
5 effectiveness and the cost in storm water quality
6 regulation.

7 We are pleased that during preparation of the
8 2002 list, you removed the San Gabriel River for ammonia
9 and toxicity and placed the river on the enforceable
10 programs list for these pollutants and that you
11 clarified that the lists for copper and zinc were for
12 dissolved metals only.

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

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

1 until specific pollutants are identified.

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

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

21 We disagree with the way the staff has
22 structured the 303(d) list in the current draft. The
23 enforceable programs list and the TMDLs' completed list
24 should remain separate lists, not categories of the
25 303(d) list. The 303(d) list should be restricted to

1 impairments where the pollutants causing the impairments
2 are known and where other enforceable programs are not
3 in effect.

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

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

10 MR. SILVA: Thank you.

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

13 MR. SILVA: Desi Alvarez.

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

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

24 The executive advisory committee of the
25 LA Permit believes that past, current, and future

1 findings and actions in relation to the 303(d) listing
2 and TMDL programs are of significant importance and that
3 the Board's efforts to hear and carefully consider input
4 on this is both lawful and appropriate.

5 In many respects, the local 1998 and 2002
6 303(d) listing process appears to border on
7 capriciousness due to listings for pollutants that are
8 unidentified, such as the toxicity, in the construction
9 and demolition of new watch lists. Both listings and
10 delistings are based on dubious data and conservative
11 water quality objectives, such as extrapolation CPR
12 standards.

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

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

22 The 1998 and 2002 lists contain impairments
23 based on dubious or inadequate data that was quickly
24 rescinded or shuffled to other lists, other impairments
25 such as toxicity and indicator organization pollutant

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

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

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

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

22 The discussion on trend analysis should be
23 expanded to consider trends of meteorological conditions
24 such as extended droughts or increasing temperature
25 regions which may improve contamination concentrations.

1 And the concept of transitioning numeric water
2 objectives between adjacent receiving water reaches has
3 already risen locally as different coalitions discuss
4 this at public forums.

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

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

14 MR. SILVA: Thank you.

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

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

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

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

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

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

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

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

21 Also with respect to Section 3.1.2, Public
22 Works believes that while dissolved oxygen data may be
23 enough to place the water body on the list or may be
24 used as secondary data for the 303(b) listing, it is
25 inadequate for intricate impairments.

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

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

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

21 Section 6.1, we believe that this is
22 inconsistent with Section 6.2.5.2, which states that
23 only the most recent ten-year period of data and
24 information shall be used for listing and delisting
25 waters. So we would request that that inconsistency be

1 addressed.

2 With respect to Section 6.2.5.6, we agree with
3 previous comments made by Desi Alvarez regarding the
4 pooling of data for the joining segments.

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

11 And that concludes my comments. Thanks.

12 MR. SILVA: Thank you.

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

22 MS. INCIONG: No, we don't.

23 MS. SUTLEY: Okay. Thank you.

24 MR. SILVA: Heather Merenda.

25 MS. MERENDA: My name is Heather Merenda. I am a

1 sustainability planner for the City of Santa Clarita. I
2 have provided the business card to the --

3 MR. SILVA: Great.

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

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

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

21 If you want more sensitive readings, then more
22 sensitive data and more sensitive tests should be
23 required, even if that is more expensive and it results
24 in budget problems for monitoring programs and for
25 compliance monitoring programs. The State's standards

1 are just too high to assume that pollutants are present
2 when they may not be.

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

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

20 MR. SILVA: Thank you.

21 Next is Clayton Yoshida.

22 MR. YOSHIDA: My name is Clayton Yoshida
23 representing the City of Los Angeles Bureau of
24 Sanitation. Thank you very much for the opportunity to
25 submit comments and especially for coming down to this

1 region.

2 The Bureau is committed to supporting the
3 Regional Board. In doing so, we want to emphasize the
4 importance of water quality decisions which are both
5 scientifically based and statistically based.

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

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

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

22 We also request that a separate alternative
23 enforceable program be restored to the policy. Waters
24 with such alternative programs would be listed
25 separately from the 303(d) list, provided that the

1 enforcement programs are shown to be effective in our
2 region.

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

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

15 We also request that --

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

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

22 MS. SUTLEY: Thank you.

23 MR. YOSHIDA: All right. And also, we request that
24 criteria and standards taken from guidance documents
25 used in the decision-making process be promulgated in

1 our basin plan so that the general public may comment on
2 the appropriateness of these documents for our region.

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

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

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

13 MR. SILVA: Thank you.

14 James Colston.

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

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

21 It's very important that there is a
22 transparent process for listing and delisting; and to
23 the extent that this policy will resolve that issue for
24 the State, it's strongly supported by the Orange County
25 Sanitation District.

1 I wanted to speak briefly about one issue, and
2 that is the need for the planning and monitoring lists.
3 We would like to see that restored to the policy. My
4 own experience with it is in the Santa Ana region where
5 there was a listing for unknown toxicity. And in this
6 instance, it resulted in an effort to develop TMDLs.
7 And in one instance, it was for a pollutant that was
8 later determined was not impairing the water body.

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

16 And really what it does is it pulls the TMDL
17 process out of where it belongs, which is water quality
18 standards. Water quality standards are the backbone of
19 the Clean Water Act; and to the extent that the TMDL
20 process is removed from that in terms of there isn't an
21 identified pollutant and there isn't an established
22 criteria for what the appropriate amount of the
23 pollutant is in that water body, then the TMDL process
24 is going to be delayed and take more time and take more
25 money and take more resources.

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

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

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

12 MR. LEVY: Thank you.

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

16 So that's it. Do you have questions?

17 MR. SILVA: Thank you.

18 Richard Watson.

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

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

1 I would like to make a few general comments
2 and review a few policy questions and, finally, make a
3 couple of recommendations.

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

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

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

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

1 Section 303(d) .

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

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

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

21 A couple of policy questions, I think, that
22 are involved here and have to be addressed in the FED
23 document. Really, who makes the policy? What are the
24 roles of the State and Regional Boards? Are we to have
25 a standardized scientifically-based list, or are the

1 Regional Boards and the Regional Board staffs going to
2 have the same level of flexibility and the lack of State
3 Board oversight that they had prior to the 2002 list?

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

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

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

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

23 We further recommend that the 2004 listing
24 process be focused on preparing an impaired waters list
25 that would be part of the California integrated water

1 quality report discussed in the July 2003 draft and
2 mentioned in Section 6.2.1 of the December draft.

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

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

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

13 Thirdly, the alternative enforceable program
14 that we discussed earlier;

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

19 And lastly, a watch list, or if you want to
20 call it a planning and monitoring list, consisting of
21 segments expected to be water quality limited; but with
22 insufficient data information, it placed them on the
23 303(d) list.

24 I want to again thank you for allowing us to
25 provide these comments, and we will be providing

1 detailed written comments for your consideration in the
2 FED.

3 MR. SILVA: Thank you.

4 Blane Frandsen.

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

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

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

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

24 The people of Lawndale and the local
25 government share a common desire to improve the water

1 quality of our city. We want to be a good neighbor to
2 the cities around us, and we recognize the importance of
3 controlling pollution from storm water runoff as a part
4 of that goal.

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

11 We are concerned about the inclusion on the
12 303(d) list of generalized listings for specific
13 pollutants are not identified.

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

25 We are also still concerned about the listing

1 of the Dominguez channel for high choliform and for a
2 high choliform count. The Dominguez channel, you know,
3 is not a body contact recreational facility; it is a
4 flood control channel where no legal recreational use
5 exists. It is unclear as to what, if any, use is being
6 impaired.

7 We recommend that the 303(d) listing policy
8 require reevaluation of water bodies listed on previous
9 303(d) lists. Many previous may be inappropriate
10 because of inadequate data quantity and quality;
11 evidence that natural sources have caused or contributed
12 to the impairment; and/or water quality standards upon
13 which listings are based are inappropriate.

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

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

1 conditions.

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

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

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

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

17 MR. SILVA: Great. Thank you.

18 Eric Escobar.

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

21 I would just like to express how we feel at
22 the City of Inglewood regarding these 303(d) lists. We
23 are in full support of comments that have been made so
24 far, and we hope that the decisions taken by the
25 State Board are something that can help the cities in

1 these difficult times so that resources can be invested
2 to create solutions that would provide the results that
3 we are all looking for. Thank you.

4 MR. SILVA: Thank you.

5 Heather Lamberson.

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

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

19 Now, we have seen these things in past that
20 have been made using a variety of assessment
21 methodologies; and these methodologies have applied
22 varying degrees of data quality and quantity in addition
23 to different types of data, and those types of data
24 range from visual observations to one-time studies to
25 water quality data from discharge or monitoring

1 reports.

2 And we just want to emphasize that there is a
3 need to balance environmental protection with technical
4 scientific integrity, and we feel that this policy goes
5 a long way toward achieving that.

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

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

23 Now, when these listings are evaluated, maybe
24 some waters may come off the 303(d) list in cases where
25 impairments are undetermined, whether cause of

1 impairment is unknown, or in cases where data is
2 insufficient in order to determine if an impairment
3 exists. And those are some of the reasons why we also
4 strongly recommend the establishment of a monitoring
5 list. Waters for where there is this type of
6 uncertainty should not be on the 303(d) list.

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

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

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

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

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

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

18 MR. SILVA: Thank you.

19 Mary Jane Foley.

20 MS. FOLEY: Thank you.

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

25 Thank you for the opportunity to come and make

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

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

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

22 And the reason the one list is scary is that
23 history shows that sometimes in a certain era, everybody
24 understands the rules of the game and makes their
25 assumptions on how this can work out to be fair and

1 practical, and then the rules of the game change. New
2 people come in, EPA has a different decision tree that
3 they pass down to the State and they say, "No. We're
4 not going to do it that way. They're on the list.

5 They're on list," and there's no getting off the list.

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

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

20 Also, in our comments, in our written comments
21 that will come later, we commend the Board for providing
22 a mechanism for the reevaluation of water bodies
23 identified in the 303(d) list using the listing policy.

24 Once it is approved and we -- I would also --
25 Clayton, who came up, and some of the other people

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

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

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

20 MR. SILVA: Thank you.

21 Rodney Anderson.

22 MR. ANDERSON: Good morning. My name again is
23 Rodney Anderson, and I am representing the City of
24 Burbank Public Works. And I, too, want to commend the
25 Board and staff for putting this policy together and

1 working on this. I think it is a great improvement from
2 how the lists have been done in the past. To have a
3 transparent policy is going to be very helpful.

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

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

16 And at the same time, although we think that
17 this policy will be good, we do have a couple of issues
18 that we would like to address. Number one -- and it was
19 just mentioned by Mary Jane, and I am going to add to
20 her comments regarding the reevaluation of some previous
21 listings, the 1998 listings. We are disappointed that
22 all of those listings will not be reevaluated according
23 to this policy. But I think that we recognize that
24 performing a TMDL is much more time consuming than
25 evaluating a potentially wrong listing. So although it

1 would take a lot of time to reevaluate all of the
2 listings, it's even more time to do TMDLs for those
3 listings.

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

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

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

25 So to ask for new data on some of these

1 nuisance listings is very difficult for us, and we know
2 that the kind of data that was probably done to get the
3 '98 listings won't be accepted now. So we would want
4 some of those reevaluated when requested in writing.

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

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

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

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

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

1 have zero exceedances and still get listed. There is no
2 concrete guidelines on that. Perhaps specific
3 guidelines, such as at least 5 percent have to be -- of
4 exceedances, or there is a 25 percent increase in the
5 pollutant concentrations over a five-year period, or if
6 there is a minute number of samples. The only statement
7 is that there are three years, and they have to look at
8 some general guidelines. So those criterion are so
9 subjective, we feel they need to be nailed down a little
10 bit more if trends are to be used at all.

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

14 MR. SILVA: Thank you.

15 Phyllis Papen.

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

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

23 During the preparation of the 2002 303(d)
24 list, State Board staff reviewed and analyzed the
25 recommendations submitted by the Regional Boards and

1 their staffs. This was a good start at scrutinizing the
2 technical and scientific support used by the Regional
3 Boards for the listing and delisting.

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

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

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

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

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

5 The City of Signal Hill is also concerned with
6 provisions in the draft policy which will allow listings
7 based on pool data. As written in the December draft
8 policy, a segment of water body could be placed on the
9 303(d) list if just one sample from that segment reaches
10 water quality criteria and samples in adjacent segments
11 exceeded criteria. We request that the draft policy be
12 amended so that each water segment is required to be
13 evaluated independently, which is a much more accurate
14 indication of actual water conditions.

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

1 Finally, the City of Signal Hill continues to
2 be concerned that the Los Angeles River estuary has
3 several listings related to historic use of pesticides
4 and lubricants. Among these are chlordane, DVT, lead,
5 PCPs, and zinc. These are all listed because of
6 presence in sediment.

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

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

18 MR. SILVA: Thank you.

19 Larry McKenney.

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

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

1 specifically to you, the Board members, for your
2 thinking as you hear all of these comments and then
3 later when you're evaluating what staff does with all of
4 this; and that is that these questions of whether there
5 should be multiple lists or whether there can be
6 subcategories under the list, that's an important
7 question, and also the question of the reevaluation
8 procedure.

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

18 When the implementation of 303(d) results in
19 so many water bodies being listed that we have decades
20 of backlog, then the system has failed to use it as a
21 prioritization tool. So however we resolve the issues
22 of the multiple lists or sublists and how existing lists
23 are reevaluated, to me the key policy consideration is
24 the process has to work as a way of prioritizing the
25 highest priority issues.

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

3 MR. SILVA: Thank you.

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

9 (Recess.)

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

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

15 And I would like to reiterate, like the other
16 agency speakers, that finally as to both new issues, I
17 wanted to reiterate some of the challenges in dealing
18 with analytical chemistry that pops up. Essentially we
19 are concerned about how these new rules interact with
20 things like CTR, when we have seen past listings based
21 on very, very low and unusual hardness levels that
22 perhaps -- I'm sorry. I should be clear. CTR listings
23 for metals that are interacting with very, very low
24 hardness measurements that are essentially atypical and
25 require the CTR to be extrapolated beyond what is

1 represented in CTR documents at the level of, like, two
2 parts her million hardness when the CTR tables stop at
3 25.

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

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

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

18 MR. SILVA: Thank you.

19 Robin Rierdan.

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

25 I am here because I am concerned about this

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

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

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

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

1 that water, but yet they were swimming in that water.

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

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

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

25 So I guess what I am asking you is as you go

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

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

24 MR. SILVA: Thank you.

25 Mark Gold.

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

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

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

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

25 I am going to go over some of the top issues

1 that our organization has. But like I said, it's not a
2 complete list in that one of our concerns is that all
3 too often the current approach results in sort of an
4 approach of when in doubt, take it out, or don't list
5 the water body at all.

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

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

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

20 So, for example, you have 10 percent allowable
21 exceedance plus a confidence variable of 90 percent plus
22 a null hypothesis that starts with the assumption that
23 the water is clean. So you're building on this level of
24 uncertainty with the end result being less water quality
25 protection.

1 So the overall result, if you stack them
2 together, the safety margin, to protect against listing
3 clean waters, is allowing them more than a 10 percent
4 exceedance rate. Instead, as high as a 30 percent
5 exceedance rate is allowed on -- and even with a very
6 robust sample size of 100, the allowable exceedance rate
7 is as high as 15 percent. So that is a major problem.

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

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

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

23 And the sorts of questions that would be asked
24 in that statistical approach is did this group of
25 samples exceed the standard with X confidence? Or

1 flipping it around, did this group of samples meet the
2 standards with X confidence? So that's a different
3 approach that doesn't saddle you with the arbitrary
4 10 percent as you have right now.

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

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

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

1 cause to the State Regional Boards.

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

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

13 One thing, I think, that's very critical to
14 point out is that this exact debate has occurred for the
15 last 25 years on the whole 301(h) waiver issue, and that
16 argument made by the dischargers has lost time and time
17 again where if there is impairment, then you must indeed
18 upgrade your facilities. That is what you have seen in
19 301(h), and that has worked quite well, I think, for the
20 State of California.

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

1 A minimum of three years or more new data must
2 be used in the evaluation for delisting;

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

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

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

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

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

1 pollutant.

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

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

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

19 Then, based on the listing provisions, it
20 would immediately be listed again for Santa Monica bay
21 beaches where the reference location requirement is zero
22 days. So it just doesn't make sense. The key thing
23 here is that you need to be consistent in only having a
24 reference-based approach on listing in this particular
25 circumstance. And if you can't use the approach, the

1 one that was given, the arbitrary 10 percent and
2 4 percent, is based on data for a five-week period. So
3 it's certainly not enough to make a regulatory decision.

4 And then lastly, because I know I have gone
5 way too long, is that if there is an enforcement
6 program, then the pollutant can't be listed on the
7 303(d) list. So that's throughout the document, and
8 it's very, very confusing in a lot of places. Instead,
9 it gets put on the enforcement list.

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

16 And to even take a step further, there would
17 be no listing if there is any mechanism for enforcement.
18 So, for example, if you have an MS-4 permit that
19 requires cleaning and street sweeping, since that is an
20 enforceable program and you have that NTS permit for
21 that, this would ensure that no urban receiving waters
22 would get listed for trash. Clearly, this can't be the
23 intent of the State Water Resources Control Board in why
24 you have strongly upheld the trash TMDL impact at times.
25 And honestly, trash is a major, major impairment issue.

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

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

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

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

25 MS. JAHAGIRDAR: Thank you. My name is Sujatha

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

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

13 And the second question is what types of
14 waterways will drop off the list if this current
15 criteria is applied to waterways that are already on the
16 303(d) list?

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

23 And specifically I would like to talk about a
24 few examples. The first is San Antonio Creek. And
25 San Antonio Creek is a small little waterway that runs

1 through the center of Ojai in Ventura County, and it's a
2 beautiful creek. There is a park around it in Ojai
3 itself, and then as it exits the city, it runs into
4 agricultural land where it runs through orchards of
5 avocado trees and orange trees, and it's seen as central
6 to the identity of this part of Ventura County so much
7 so that the Ventura Stream Team adopted this creek as a
8 waterway that they want to go ahead and protect.

9 And they wanted to protect it not only for its
10 aesthetic value and as a place of refuge for the
11 community, but also because it's home to the unarmored
12 three spike stickleback, which is an endangered species
13 that was put on the federal endangered species list in
14 1970.

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

20 And when it's in water, what it does is it
21 encourages the growth of algae. And when you have lots
22 of algae growing in a waterway, you have a lot of
23 bacteria that feed on the algae which then suck out the
24 oxygen from the waterway. And so in effect what you do
25 when you have a lot of nitrate in a waterway is

1 suffocate the wildlife that are actually present in the
2 waterway and threaten species like the unarmored three
3 spike stickleback.

4 So nitrate is a huge problem, and the Ventura
5 Stream Team identified that nitrate was a problem in
6 much greater than 10 percent of the threshold that were
7 originally put on the list. In fact, they found that
8 4 out of 23 samples demonstrated elevated levels of
9 nitrate above water quality standards.

10 Unfortunately, however -- and the Los Angeles
11 Regional Water Quality Board acted upon this data and
12 consequently put this waterway on the list.

13 Unfortunately, with this current policy, you would now
14 need 5 of the 23 samples to have listed this waterway in
15 the first place. So San Antonio Creek is the type of
16 waterway that we may see never put on a list in the
17 future or may be threatened if the suggestion from the
18 earlier speakers are taken to reevaluate the list
19 immediately and take out waterways that don't meet the
20 policy.

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

1 dozens and dozens of cities and communities.

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

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

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

23 And, unfortunately, though, under this
24 particular -- under the proposed guidance policy, you
25 would need six samples of zinc exeedances to meet the

1 requirements of the binomial approach. So again, we
2 have an example of a waterway that is clearly
3 contaminated, has a lot of community investment, yet it
4 would never have been put on the list to get cleaned up
5 in the first place and is in danger of falling off the
6 list if the suggested revisions are implemented.

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

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

21 Coyote Creek runs in the northern part of
22 Orange County, and it's a major part of the local
23 economic fabric. It actually supplies water and is part
24 of the aesthetic environment of one of the most famous
25 golf courses in Southern California. It was a golf

1 course designed by Jack Nicklaus, and it's a major part
2 of the local economy.

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

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

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

23 MR. SILVA: Thank you.

24 And I would request that you keep it closer to
25 five minutes. Most of you have been going about ten or

1 so. If you have similar comments, just say you agree
2 with the comments.

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

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

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

22 There are places where the data -- there are
23 literally 100 percent of the data, three or four
24 samples, show exceedances and the water body would not be
25 listed. It does not allow for what Mark Gold referred

1 to as best professional judgment to be used in listing
2 such water bodies.

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

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

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

20 There are clearly cases where there are fish
21 deals where there are high mortality and toxicity
22 testing where there is a problem with a water body and
23 it should be tested. That doesn't preclude, and it
24 should include additional testing to identify the
25 pollutant, but that doesn't mean that the body should

1 not be listed for toxicity. So we encourage you to keep
2 that requirement in the listing procedures.

3 Thank you.

4 MR. SILVA: Thank you.

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

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

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

25 One, as we have just mentioned, Dana Point

1 Harbor is listed for copper. And the problem there is
2 that the sampling that was done was done during a storm
3 event. But even though we know that the copper is
4 coming from the boat hauls and it's becoming persistent
5 in the harbor, because the samples were done during a
6 storm event, they would not be looked at for the draft
7 guidance. And so if the source of the problem is clear
8 and ongoing, as it is in so many harbors and marinas,
9 why should the timing of the sampling that was done
10 prevent the harbor from being listed?

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

21 And if you look just on the San Louis River
22 until the last year of the data, four samples were
23 taken, and all four exceeded the standard. Clearly
24 something has gone on there; but under the draft
25 guidelines, the river would not be listed.

1 And then I will just tell you about
2 Lake Hodges, which is currently listed for pollar
3 (phonetic). And again, you have the same issue.
4 Although the lake has 100 percent exceedances every time
5 it's measured, at least from '98 to 2000, it would not
6 listed under the draft guidelines. And the problem
7 there again is the sample sizes are too small to be
8 counted under the binomial model. So even though we
9 know that there is a consistent problem there, it would
10 not have been listed.

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

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

21 MS. SOLMEN: Yeah. Absolutely. And perhaps I am
22 not the best person to speak to this, and I think that
23 other speakers can comment on this, but one thing is
24 that the requirements for the ADE are relatively
25 unclear. And I think that for some of the requirements,

1 we get into problems with the binomial model. So I
2 don't think that it's a complete solution.

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

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

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

25 So I go over to the next procedure, which is

1 Section 3.1.11, and I begin to try to use this as the
2 way to use scientific knowledge that any scientist would
3 look at. But I get to this, and it says at a minimum
4 the justification must demonstrate, and then I get to
5 that measurements can be analyzed using a scientifically
6 defensible procedure that provides an equivalent level
7 of confidence as the listing factors in Section 3.1 and
8 tests the null hypothesis that water quality standards
9 are attained.

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

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

25 Again, in the alternative data analysis, that

1 kind of demonstration is one of the principal reasons
2 you find Regional Boards themselves who have to use this
3 information, raising objections about this policy.

4 There needs to be -- while I hear the regulator
5 community say they feel that this is nebulous, I think
6 that Regional Board staff and the environmental
7 community feel as though there must be room for more
8 scientific method on this thing. Hypothesis testing is
9 not the only science applied to water quality.

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

15 In fact, there are two lists, one on which
16 largely goes unnoticed. The Clean Water Act requires
17 that you make a 305(b) list and a 303(d) list. Nobody
18 in this room is talking about 305(b). 305(b) is
19 effectively this planning list, this watch list. The
20 downside of trying to create each of these other lists
21 is that Regional Board staff time has to be spent
22 jumping through administrative hoops to prove a program
23 is enforceable or to establish yet more criteria. The
24 fact is 305(b), the statewide water quality assessment,
25 is required.

1 Establishing a planning list or a monitoring
2 list in particular, we have SWAMP that is working
3 statewide. It's an amnio monitoring program encouraged
4 by the legislature to be established and so forth. That
5 program has very finite resources. It can't be an amnio
6 monitoring program and effectively cover the State of
7 California if it is redirected whenever someone finds a
8 problem.

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

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

25 I have been working on the AG waiver program

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

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

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

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

25 I guess in closing, just maybe one more

1 concluding remark regarding the binomial approach. I
2 have seen these bottled waters here. Let's say
3 Company A does testing on that bottled water there. And
4 they test the water, and when they're 90 percent sure
5 it's clean, they put the cap on it and give it to you
6 drink.

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

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

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

25 So these entire several years that we have

1 spent may well end up for naught unless the Board finds
2 a way to make this policy consistent with the EPA and
3 the Regional Board staff. Thank you very much.

4 MR. SILVA: Thank you.

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

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

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

23 However, as I appreciate Robin Rierdan's
24 comments who comes from the inland area of the San Diego
25 River, our rivers and creeks, even when they are

1 channelized, especially when they have soft bottoms, are
2 used by children. I have been fishing in the LA River.
3 When I was a child, I caught salmon and steelhead, not
4 as my grandfather did in all of the rivers of Southern
5 California, but they were still remaining in rivers all
6 the way down to the Mexican border. It's not like
7 everything is beyond saving at this point.

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

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

1 through and see it. It's used for irrigation, and it
2 keeps the water clean at the beach.

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

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

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

1 worked on this.

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

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

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

19 MR. SILVA: Thank you.

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

23 MR. SILVA: I guessed that.

24 Okay. That's all of the cards I have.
25 Anybody else that we missed or did not fill out a card?

1 If not, I want to thank everybody for coming here. I
2 realize -- I have been on this for a while, and I have
3 to tell you we're back to the same issues, the issue of
4 how many lists we have and the methodologies of how you
5 get on and off the list. It has been a long haul, and
6 we will see what the comments say and what the Board's
7 pleasure is in terms of all of these very tough issues.

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

11 And I think Nancy has something to say.

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

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

18 (The proceedings were concluded at 12:20 p.m.)
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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

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

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

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

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



KATHRYN L. MAUTZ, CSR No. 11539

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In re: Public Hearing for Water Quality Control Board

Transcript of Proceedings, February 5, 2004

1 HEARD BEFORE THE CALIFORNIA
 2 STATE WATER RESOURCES CONTROL BOARD
 3
 4
 5 In re:
 6 Public Hearing for Water Quality
 7 Control Policy for Developing
 8 California's Clean Water Act
 9 Section 303(d) List and Draft
 10 Functional Equivalent Document
 11
 12
 13
 14
 15 TRANSCRIPT OF PROCEEDINGS, taken on behalf
 16 of the State Water Resources Control Board, at
 17 3330 Civic Center Drive, Torrance, California, at
 18 10:05 a.m., on Thursday, February 5, 2004, before
 19 KATHRYN L. MAUTZ, CSR No. 11539, RPR.
 20
 21
 22
 23
 24 Reported by: KATHRYN L. MAUTZ, CSR No. 11539, RPR
 25 Job No.: 04-26018

1 Michael Levy.
 2 California Water Code Section 1319.3(a)
 3 requires the State Water Board to develop guidelines
 4 describing the process by which the State Board and the
 5 Regional Water Quality Control Boards shall comply with
 6 the listing requirements of the Clean Water Act Section
 7 303(d) list. The policy will ultimately establish a
 8 standardized approach for developing the California
 9 Section 303(d) list.
 10 This hearing is being held to solicit comments
 11 on the proposed policy's recommended procedures. We're
 12 evaluating information solicited in support of listing
 13 or delisting county water bodies for the list. The
 14 policy addresses prioritization of listed water bodies
 15 for eventual development and implementation of TMDLs.
 16 The State Board staff has prepared a final --
 17 a functional equivalent document for the proposed policy
 18 in compliance with the California Environmental Quality
 19 Act. The FED presents an analysis of the environmental
 20 issues and alternatives to be considered by the State
 21 Board in adopting the proposed policy.
 22 In today's hearing, the order of procedure
 23 will be a brief staff presentation, followed by
 24 testimony from interested parties. If you haven't
 25 already done so, if you want to speak, please fill out a

1 APPEARANCES:
 2 For the State Water Resources Control Board:
 3 PETER S. SILVA
 4 NANCY H. SUTLEY
 5 MICHAEL LEVY
 6 CRAIG WILSON
 7 LAURA SHARPE
 8 PATRICIA GOUVEIA
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1 blue card. We will also -- if you'd like, we also want
 2 to receive written comments regarding the proposed
 3 policy.
 4 The hearing will now be conducted in
 5 accordance with the technical rules of evidence.
 6 Testimony as reasonably related to the proposed policy
 7 will be in evidence. Written and oral comments are all
 8 part of the record.
 9 At today's proceedings, oral presentations
 10 will be limited to no more than five minutes. If you
 11 could, before you begin your testimony, identify
 12 yourself by name and address for the court reporter.
 13 And if any of you have any business cards, that would
 14 also be helpful.
 15 If the speaker before you has addressed your
 16 concern, please state your agreement and do not repeat
 17 the testimony.
 18 The record will remain open. I want to point
 19 out that it has been moved back to February 18, 2004.
 20 It was originally February 11th. Following the close of
 21 the record, State Board staff will review and respond to
 22 all comments in writing. Written responses will be
 23 included in the final FED with a revised policy as
 24 necessary.
 25 Staff will make the revised policy available

1 Torrance, California; Thursday, February 5, 2004
 2 10:05 a.m.
 3
 4
 5 MR. SILVA: Okay. Good morning, everybody. Why
 6 don't we get started.
 7 First of all, thanks to everybody for coming
 8 out and for providing us your comments. With us this
 9 morning is my colleague, Nancy Sutley, from the State
 10 Water Board, and I will do the official introduction.
 11 This is the time and place for a public
 12 hearing by the State Water Board regarding the proposed
 13 water quality control policy. We're developing
 14 California's Clean Water Act Section 303(d) list. This
 15 is the second of two public hearings on the draft
 16 policy. The first public hearing was held on
 17 January 28, 2004, in Sacramento.
 18 I am Peter Silva, a member of the State Board
 19 and today's hearing officer.
 20 I would like to also introduce the staff who
 21 are here responsible for the 303(d) list activities and
 22 will be assisting the Board during this hearing. From
 23 the division of Water Quality, we have Craig J. Wilson,
 24 as I think most of you know, Patricia Gouveia,
 25 Melanie Manuel, and Laura Sharpe, and also chief counsel

1 to interested parties at least 15 days before
 2 consideration by the Board. Interested parties should
 3 notify the date and place of future Board workshops and
 4 Board meetings where the proposed policy will be
 5 considered for adoption.
 6 That concludes my opening statement, and I
 7 think Craig will give a speech.
 8 MR. WILSON: Good morning, Mr. Silva, Ms. Sutley.
 9 My name is Craig J. Wilson. I am chief of the
 10 TMDL listing unit in the Division of Water Quality of
 11 the State Water Resources Control Board.
 12 I would like to begin my presentation with a
 13 brief overview of the Section 303(d) requirements and
 14 the process that led to the development of the policy.
 15 Then I will go, very briefly, into describing the
 16 documents that are the subject of this hearing.
 17 Section 303(d) and the accompanying federal
 18 regulations requires states to regularly identify water
 19 bodies that cannot achieve applicable water quality
 20 standards after certain technology-based controls have
 21 been implemented.
 22 In complying, California has developed
 23 successive lists of waters not meeting water quality
 24 standards by any league since 1976.
 25 After 1996, public attention increasingly

1 focused on an important consequence of the
2 Section 303(d) listing, or the development and
3 implementation of total maximum daily loads, or TMDLs.
4 Simultaneously, public demand for regional
5 consistency and transparency in the listing process
6 intensified. In response, the Water Code now requires
7 the State Board to prepare guidelines for listing and
8 delisting of water bodies on the Section 303(d) list.
9 These guidelines, contained within the draft
10 policy, provide consistent, transparent approaches for
11 the identification of water quality limited segments
12 using a standard set of tools and principles to evaluate
13 data. It also provides for a scientifically defensible
14 approach to address the identification of waters on the
15 list, and it provides a transparent public process.
16 State Board regulations independently require
17 that an environmental review equivalent to the
18 California Environmental Quality Act, or CEQA document,
19 accompany policies proposed for State Board adoption.
20 State Board staff has developed a functional
21 equivalent document, or FED, that contains, as required
22 by those regulations, a brief description of reasonable
23 alternatives to and mitigation measures for the proposed
24 activity.
25 The purpose of the FDT is to present

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

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

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

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

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

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1 impairments where the pollutants causing the impairments
2 are known and where other enforceable programs are not
3 in effect.
4 Furthermore, the monitoring and planning lists
5 should not be lost. Perhaps we should go back to a
6 watch list that would incorporate both of these lists
7 and more accurately describe the purpose of the list.
8 Thank you again for the opportunity to comment
9 today on the draft 303(d) list policy.
10 MR. SILVA: Thank you.
11 MR. PRATT: I have a copy here for the clerk here
12 if you would like them.
13 MR. SILVA: Desi Alvarez.
14 MR. ALVAREZ: Good morning. My name is
15 Desi Alvarez, and I am here speaking on behalf of the
16 executive advisory committee of the LA County Storm
17 Permit.
18 I would like to thank you for the opportunity
19 to speak to this matter this morning and say that we
20 appreciate the Board's recognition of the significant
21 level of local interest in this policy and your making
22 yourselves available to hold a hearing here in
23 Los Angeles County.
24 The executive advisory committee of the
25 LA Permit believes that past, current, and future

1 And the concept of transitioning numeric water
2 objectives between adjacent receiving water reaches has
3 already risen locally as different coalitions discuss
4 this at public forums.
5 We recommend that utilization of pool data
6 from different receiving water areas will resolve any
7 discord and lead to cases where alternative but
8 technically equivalent data could independently argue
9 for listing and monitoring a new list. So therefore, we
10 would encourage that any policy be relied on as
11 site-specific data as possible.
12 Thank you very much for the opportunity to
13 make these comments.
14 MR. SILVA: Thank you.
15 Next is Carrie Inciong. I apologize for your
16 name. That's -- the hardest part about being a hearing
17 officer is pronouncing names.
18 MS. INCIONG: For the record, that was the right
19 pronunciation.
20 My name is Carrie Inciong, like you said. I
21 am with the LA County Department of Public Works. My
22 comments are detailed in a letter that I will be handing
23 over to Mr. Wilson after my talk.
24 First of all, thank you very much for holding
25 a meeting down here in LA. We really appreciate that.

1 findings and actions in relation to the 303(d) listing
2 and TMDL programs are of significant importance and that
3 the Board's efforts to hear and carefully consider input
4 on this is both lawful and appropriate.
5 In many respects, the local 1998 and 2002
6 303(d) listing process appears to border on
7 capriciousness due to listings for pollutants that are
8 unidentified, such as the toxicity, in the construction
9 and demolition of new watch lists. Both listings and
10 delistings are based on dubious data and conservative
11 water quality objectives, such as extrapolation CPR
12 standards.
13 We sincerely certainly hope that the final
14 document will settle much of the confusion that clouds
15 what should be a transparent regulatory process allowing
16 our municipal agencies to concentrate on the most
17 significant issue of water quality issues.
18 We recommend returning to the multi-list
19 format that appears in prior drafts and, more
20 importantly, was consistent with EPA guidelines and the
21 National Academy of Science report to Congress.
22 The 1998 and 2002 lists contain impairments
23 based on dubious or inadequate data that was quickly
24 rescinded or shuffled to other lists, other impairments
25 such as toxicity and indicator organization pollutant

1 And let me just jump right in. LA County
2 Public Works believes it is necessary to reevaluate
3 water quality standards and beneficial uses within the
4 reachable basin plans prior to the listing of additional
5 waters or initiation of TMDL development of waters
6 already listed on the 303(d) list.
7 Also, Public Works is in favor of the planning
8 list on which waters with some indication of an
9 impairment could be placed, as was discussed in the
10 July 2003 draft.
11 We also support previous comments already made
12 regarding the inclusion of the reevaluation of each
13 apparent water body on the 2002 303(d) list.
14 Also, with regards to the water quality
15 limited segment factors section, which states, "For
16 sample populations less than ten with three or more
17 samples, see the evaluation guideline. The segment
18 shall be listed," this statement is inconsistent with
19 Table 3.1, and we request that the State Board address
20 that inconsistency.
21 Also with respect to Section 3.1.2, Public
22 Works believes that while dissolved oxygen data may be
23 enough to place the water body on the list or may be
24 used as secondary data for the 303(b) listing, it is
25 inadequate for intricate impairments.

1 groups. We request the monitoring list be reconstituted
2 so that specific controllable pollutants may be
3 identified prior to TMDL preparation. This will ensure
4 the listings will result in solid, predictable actions.
5 Periodic reevaluation of contaminant listings
6 should be mandatory. New listings should be balanced by
7 delistings due to new data and/or objective
8 achievements.
9 The statistical methods identified in Issue 6
10 are probably the most important aspect of this policy
11 document. They have the potential to eliminate the
12 perception that some listings have been set arbitrarily
13 or that delisting is overly onerous and subject to
14 political decisions that cannot be rationally
15 objectified.
16 With this in mind, we courage staff to
17 carefully review the descriptions to clarify their
18 meaning to the greatest degree and provide additional
19 language to clarify any analytical confusion to the
20 matrix effect, detection quantification limits, and
21 impact of core data about one parameter or another.
22 The discussion on trend analysis should be
23 expanded to consider trends of meteorological conditions
24 such as extended droughts or increasing temperature
25 regions which may improve contamination concentrations.

1 Also with respect to Section 3.1.10 of the
2 proposed policy, the trends in the water quality section
3 allow the use of short-term data which may be affected
4 by a hydrological condition, such as drought, as opposed
5 to actual degradation of the water quality. We believe
6 that data from the most recent five to seven years may
7 be more appropriate to avoid impacts of such hydrologic
8 conditions.
9 Section 3.1.11, alternate data evaluation,
10 appears to allow the listing of a water body using data
11 that would otherwise be considered inappropriate.
12 Public Works believes that the inclusion of this
13 section, that a listing policy will allow the additional
14 waters on the list which are not just a part of the
15 impaired, we'd request the deletion of this section.
16 Also, with respect to the language in the
17 policy which states "relatively unimpacted watersheds"
18 and how it relates to recreational uses, we request that
19 there be clarification in the document regarding the
20 term "relatively unimpacted."
21 Section 6.1, we believe that this is
22 inconsistent with Section 6.2.5.2, which states that
23 only the most recent ten-year period of data and
24 information shall be used for listing and delisting
25 waters. So we would request that that inconsistency be

1 addressed.
2 With respect to Section 6.2.5.6, we agree with
3 previous comments made by Desi Alvarez regarding the
4 pooling of data for the joining segments.
5 On Section 6.2.5.7, there is no discussion --
6 Section 6.2.5.7, by the way, has to do with natural
7 sources exclusion. There is no discussion in this
8 document of the use of a natural source exclusion to
9 delist waters, and we request that you include language
10 reflecting that.
11 And that concludes my comments. Thanks.
12 MR. SILVA: Thank you.
13 MS. SUTLEY: I have a question before you leave.
14 Just -- you made a comment that you think that the
15 alternative data evaluation was appropriate, but we have
16 direction from the legislature that we need to look at
17 the weight of evidence. And this section, I believe,
18 was intended to cover the weight of evidence direction
19 from the legislature. Do you have an alternative
20 recommendation on how we should address the weight of
21 evidence or --
22 MS. INCIONG: No, we don't.
23 MS. SUTLEY: Okay. Thank you.
24 MR. SILVA: Heather Merenda.
25 MS. MERENDA: My name is Heather Merenda. I am a

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1 sustainability planner for the City of Santa Clarita. I
2 have provided the business card to the --
3 MR. SILVA: Great.
4 MS. MERENDA: First of all, the City of
5 Santa Clarita would like to commend the State Water
6 Resources Control Board on its phenomenal efforts to
7 establish consistency to the 303(d) listing process in
8 California, and we appreciate the opportunity to provide
9 verbal testimony this morning.
10 The City will provide detailed written
11 comments on a variety of issues by the written comment
12 deadline. These comments and objections revolve around
13 the themes of maintaining uniformity in the different
14 processes and clarifying language in order to avoid
15 confusion by all parties involved.
16 However, today be we would like to highlight
17 two issues of concern. The first issue is Issue 6(f),
18 quantification of the chemical measurements. We would
19 like for you to add and recommend a third alternative
20 that nondetect should only be interpreted as unknown.
21 If you want more sensitive readings, then more
22 sensitive data and more sensitive tests should be
23 required, even if that is more expensive and it results
24 in budget problems for monitoring programs and for
25 compliance monitoring programs. The State's standards

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1 are just too high to assume that pollutants are present
2 when they may not be.
3 And Issue 7(a), in review of the existing
4 Section 303(d) listing process, we would like you to add
5 and recommend a third alternative that prior to
6 developing a TMDL, the listing data that put the
7 pollutant concerned on the 303(d) list should be
8 evaluated with the new criteria. This will help ensure
9 unnecessary TMDLs and focus limited resources on
10 priority areas, reduce the time period for Regional
11 Board and State Board staff from preventing unnecessary
12 listings, and help establish quality data that TMDLs are
13 involved which will reduce the TMDL timeline.
14 Again, we thank you for holding this public
15 hearing to give everyone an opportunity to participate
16 in developing this process; and by working together, we
17 can all end up with a policy that is both protective and
18 restorative while providing consistent accuracies to the
19 TMDL list. Thank you.
20 MR. SILVA: Thank you.
21 Next is Clayton Yoshida.
22 MR. YOSHIDA: My name is Clayton Yoshida
23 representing the City of Los Angeles Bureau of
24 Sanitation. Thank you very much for the opportunity to
25 submit comments and especially for coming down to this

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1 region.
2 The Bureau is committed to supporting the
3 Regional Board. In doing so, we want to emphasize the
4 importance of water quality decisions which are both
5 scientifically based and statistically based.
6 We believe that the policy will improve the
7 understanding of the decision-making process and
8 consistency among regions of the State.
9 However, the Bureau of Sanitation requests
10 that a separate list, a monitoring and/or planning list
11 be restored to the policy as it was written in the July
12 draft. The separate list will contain water bodies that
13 have insufficient scientific data to support a listing
14 on the 303(d) list.
15 The Bureau also requests that provisions be
16 included in the policy to ensure that water bodies on
17 this separate list are evaluated in a timely manner. If
18 we address the length of time on a separate list and
19 also the number of samples required to be collected, the
20 list can be a valuable tool for prioritizing our waters
21 without delaying cleanup efforts.
22 We also request that a separate alternative
23 enforceable program be restored to the policy. Waters
24 with such alternative programs would be listed
25 separately from the 303(d) list, provided that the

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1 enforcement programs are shown to be effective in our
2 region.
3 A good example is the bay protection cleanup
4 program which takes cares of sediments in our bays and
5 harbors. Such a program can potentially be a viable
6 alternative to the TMDL development in our region.
7 We also request that the policy contain a
8 requirement to review and revise old 303(d) listings
9 based on elements specified in the new policy. We
10 recognize that resource limitations may prevent timely
11 review of all of the old listings, but we propose an
12 application process by which the interested public may
13 propose a closer examination of selected water bodies
14 that they're interested in.
15 We also request that --
16 MS. SUTLEY: Can I stop you there a second and ask
17 you a question about that with respect to that
18 proposal? The application, do you want the application
19 process during any time or the normal listing cycle?
20 MR. YOSHIDA: I would say during the normal listing
21 cycle.
22 MS. SUTLEY: Thank you.
23 MR. YOSHIDA: All right. And also, we request that
24 criteria and standards taken from guidance documents
25 used in the decision-making process be promulgated in

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1 our basin plan so that the general public may comment on
2 the appropriateness of these documents for our region.
3 In the past -- in past listings, certain
4 studies have been used to make listing decisions, and
5 they may -- they may be appropriate for our region, but
6 then again they may not be. So we want to be able to
7 have the opportunity to comment on those things.
8 And finally, we agree with the proposition in
9 the policy that pollutants must be identified before
10 TMDLs should be developed.
11 And that's it. And thank you once again for
12 the opportunity to comment.
13 MR. SILVA: Thank you.
14 James Colston.
15 MR. COLSTON: I am James Colston with the Orange
16 County Sanitation District.
17 I would like to first support the comments of
18 the California Association of Sanitation Agencies, both
19 the oral comments that were provided and the subsequent
20 written comments that will be provided.
21 It's very important that there is a
22 transparent process for listing and delisting; and to
23 the extent that this policy will resolve that issue for
24 the State, it's strongly supported by the Orange County
25 Sanitation District.

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1 I wanted to speak briefly about one issue, and
 2 that is the need for the planning and monitoring lists.
 3 We would like to see that restored to the policy. My
 4 own experience with it is in the Santa Ana region where
 5 there was a listing for unknown toxicity. And in this
 6 instance, it resulted in an effort to develop TMDLs.
 7 And in one instance, it was for a pollutant that was
 8 later determined was not impairing the water body.
 9 And in another instance, it was based on a
 10 threshold number for a pollutant that there had been no
 11 water quality standard yet developed; and yet this
 12 particular pollutant was actually naturally occurring in
 13 the local water body, but the threshold had been
 14 determined in alternative water bodies. That resulted
 15 in an enormous expenditure of time and resources.
 16 And really what it does is it pulls the TMDL
 17 process out of where it belongs, which is water quality
 18 standards. Water quality standards are the backbone of
 19 the Clean Water Act; and to the extent that the TMDL
 20 process is removed from that in terms of there isn't an
 21 identified pollutant and there isn't an established
 22 criteria for what the appropriate amount of the
 23 pollutant is in that water body, then the TMDL process
 24 is going to be delayed and take more time and take more
 25 money and take more resources.

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1 Section 303(d).
 2 One observation I made about the existing
 3 list, for some reason in 1998 it became more of a list
 4 of generally impaired -- a general list of impaired
 5 water bodies, not really a focused 303(d) list
 6 consistent with 40 CFR 130.7.
 7 In listening to the commentary up in
 8 Sacramento through the Internet, I noted that the
 9 Regional Board staffs don't want priority ranking and
 10 schedules linked. This may be appropriate for most
 11 impaired waters, but it is not appropriate for those
 12 waters where a pollutant has been identified and a TMDL
 13 is required. The section I cited requires
 14 identification of those waters that will be targeted for
 15 development in the next two years.
 16 We have reviewed the 2002 list in relation to
 17 the requirements, the 40 CFR 130.7, and will provide a
 18 list of these 2002 listings for which pollutants were
 19 not identified and we think should be removed from the
 20 list.
 21 A couple of policy questions, I think, that
 22 are involved here and have to be addressed in the FED
 23 document. Really, who makes the policy? What are the
 24 roles of the State and Regional Boards? Are we to have
 25 a standardized scientifically-based list, or are the

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1 And as we all know, there is a great deal of
 2 TMDLs that need to be done and should be done within the
 3 State. So I just want to speak to that. My own
 4 personal experience is why I believe that we should be
 5 restored to the process and how it will make for a
 6 better TMDL process and improve, more importantly, the
 7 water quality standards program for the State.
 8 MR. LEVY: Mr. Colston, can you clarify which
 9 waters you're referring to in Santa Ana?
 10 MR. COLSTON: I am referring to the Newport Bay
 11 listing for toxicity, unknown toxicity.
 12 MR. LEVY: Thank you.
 13 MR. COLSTON: I believe that that list was
 14 supported by the National Academy of Sciences report to
 15 Congress.
 16 So that's it. Do you have questions?
 17 MR. SILVA: Thank you.
 18 Richard Watson.
 19 MR. WATSON: I have copies of my testimony which I
 20 can pass out.
 21 Good morning. My name is Richard Watson.
 22 Today I am before you representing the Coalition for
 23 Practical Regulation. I want to thank you, as others
 24 have, for this opportunity to comment on the draft
 25 listing policy.

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1 Regional Boards and the Regional Board staffs going to
 2 have the same level of flexibility and the lack of State
 3 Board oversight that they had prior to the 2002 list?
 4 Should the 303(d) list be a catch-all compared
 5 to waters, such as it became in 1998, or a list of
 6 impaired waters for which pollutants have been
 7 identified and for which a TMDL is still to be
 8 developed? And if there is some sort of general
 9 impaired waters list, what should it be like, and how
 10 should it be organized?
 11 And we support the comments that others have
 12 made, and I won't go into those same comments.
 13 I would like to make a couple of
 14 recommendations. We recommend a listing policy
 15 specified that the 303(d) list should consist of
 16 impaired water body segments for which the pollutants
 17 have been identified and a TMDL is still required,
 18 consistent with 40 CFR 130.7.
 19 We recommend that previous listings for which
 20 specific pollutants have not been identified be placed
 21 on a new pollutant identification list for high priority
 22 research and monitoring.
 23 We further recommend that the 2004 listing
 24 process be focused on preparing an impaired waters list
 25 that would be part of the California integrated water

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1 I would like to make a few general comments
 2 and review a few policy questions and, finally, make a
 3 couple of recommendations.
 4 We, too, would like to commend the State Board
 5 for making progress in the 303(d) listing process. We
 6 enthusiastically support the Board's goal of
 7 standardizing listing procedures. The improvements
 8 you've made in the 2002 listing process should continue
 9 to be improved upon.
 10 The 303(d) listing policy is one of the most
 11 significant policy positions you will be making this
 12 year. As other people have stated, when water bodies
 13 are put on the 303(d) list, that then leads to the
 14 requirement for TMDLs.
 15 You will notice the public hearing correctly
 16 states that the Section 303(d) list must include water
 17 quality limited segments, associated pollutants, any
 18 ranking or priority ranking of the waters for the
 19 purpose of developing TMDLs in the next two years. So
 20 it's pretty clear that you do have to name the
 21 pollutants.
 22 The environmental community often refers to
 23 the Section 303(d) language as fairly general. We
 24 recommend that you look carefully at 40 CFR 130.7, which
 25 provides detailed regulations for implementing

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1 quality report discussed in the July 2003 draft and
 2 mentioned in Section 6.2.1 of the December draft.
 3 We recommend a single impaired waters list
 4 with categories, but our recommendation differs somewhat
 5 from the one of staff's. We recommend a California
 6 impaired waters list containing the following:
 7 A 303(d) list consisting of water quality
 8 limited segments for which pollutants have been
 9 identified and for which TMDLs are still required;
 10 Secondly, the TMDLs completed list, it lists
 11 water quality limited segments for which TMDLs have been
 12 completed;
 13 Thirdly, the alternative enforceable program
 14 that we discussed earlier;
 15 Fourth, the list that I mentioned earlier, the
 16 pollutant identification list, to consist of water
 17 quality limited segments previously listed for which
 18 pollutants were not identified;
 19 And lastly, a watch list, or if you want to
 20 call it a planning and monitoring list, consisting of
 21 segments expected to be water quality limited; but with
 22 insufficient data information, it placed them on the
 23 303(d) list.
 24 I want to again thank you for allowing us to
 25 provide these comments, and we will be providing

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1 detailed written comments for your consideration in the
2 FED.
3 MR. SILVA: Thank you.
4 Blane Frandsen.
5 MR. FRANDBSEN: Thank you. My name is Blane
6 Frandsen, and I am the director for Public Works and
7 city engineer for the City of Lawndale, and I support
8 the comments of Mr. Watson who previously spoke for the
9 EPR crew.
10 I have come here today representing the City
11 of Lawndale. Lawndale is a two square mile area city
12 here in the South Bay area. We are a tributary to the
13 Dominguez channel.
14 MR. LEVY: Pardon me, sir. Can you speak up a
15 little bit louder, or stand closer to the microphone?
16 Thank you.
17 MR. FRANDBSEN: I will note that Lawndale is a small
18 city here in the South Bay area of Los Angeles county,
19 and we are a tributary to the Dominguez channel. The
20 Dominguez channel is a 110 square mile watershed in the
21 southern portion of the county. We are a tributary to
22 the channel, and that portion is listed on the 303(d)
23 list as about Vermont.
24 The people of Lawndale and the local
25 government share a common desire to improve the water

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1 conditions.
2 We encourage the State Board to carefully
3 address these concerns and develop a policy that ensures
4 objective methods are used to evaluate impairments and
5 that 303(d) listings are both scientifically defensible
6 and appropriate.
7 As I said earlier, the City of Lawndale
8 supports reasonable scientific-based controls to
9 mitigate pollution through storm water.
10 We hope you will consider our comments in
11 revising the draft 303(d) listing policy to reflect a
12 sound basis in science so we can focus our efforts where
13 they will do the most good to clean up the water of
14 Lawndale and the Southland cities.
15 Thank you. I have written a copy of these
16 comments for you.
17 MR. SILVA: Great. Thank you.
18 Eric Escobar.
19 MR. ESCOBAR: Good morning. I am Eric Escobar for
20 Shad Reza, general manager for the City of Inglewood.
21 I would just like to express how we feel at
22 the City of Inglewood regarding these 303(d) lists. We
23 are in full support of comments that have been made so
24 far, and we hope that the decisions taken by the
25 State Board are something that can help the cities in

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1 quality of our city. We want to be a good neighbor to
2 the cities around us, and we recognize the importance of
3 controlling pollution from storm water runoff as a part
4 of that goal.
5 However, we are extremely limited in resources
6 and are struggling to comply with the current permit
7 requirements, particularly now with regards to the State
8 budgetary conditions that are currently befalling us.
9 We want to do the right thing, and we want to see that
10 meaningful results come from our expenditures.
11 We are concerned about the inclusion on the
12 303(d) list of generalized listings for specific
13 pollutants are not identified.
14 We are also concerned that the 303(d) list
15 still contains a legacy of historic pollutants, such as
16 chlordane in PCP's, which should be handled differently;
17 that the planning/monitoring lists were included, as in
18 the July draft policy. That would be one possibility
19 for observing these legacy pollutants, to see if their
20 concentrations and possible adverse effects have been
21 reduced through time. It's just not possible at this
22 level to make known typically these are not currently
23 used. The legacy pollutants should be addressed through
24 some other enforceable program, we believe.
25 We are also still concerned about the listing

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1 these difficult times so that resources can be invested
2 to create solutions that would provide the results that
3 we are all looking for. Thank you.
4 MR. SILVA: Thank you.
5 Heather Lamberson.
6 MS. LAMBERSON: Hi. I am Heather Lamberson, and
7 today I am representing the LA County Sanitation
8 Districts. We are a local waste water entity; and we
9 operate 11 waste water treatment plants in Los Angeles
10 County, and we discharge to a number of waters that are
11 listed for various constituents.
12 We have worked with our Regional Board on
13 several TMDLs, and we have also been commenting on
14 different revisions on the 303(d) list over the past ten
15 years. So we feel that we bring both a local
16 perspective and hands-on experience to both the listing
17 process and the TMDLs that have resulted from that
18 listing process.
19 Now, we have seen these things in past that
20 have been made using a variety of assessment
21 methodologies; and these methodologies have applied
22 varying degrees of data quality and quantity in addition
23 to different types of data, and those types of data
24 range from visual observations to one-time studies to
25 water quality data from discharge or monitoring

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1 of the Dominguez channel for high choliform and for a
2 high choliform count. The Dominguez channel, you know,
3 is not a body contact recreational facility; it is a
4 flood control channel where no legal recreational use
5 exists. It is unclear as to what, if any, use is being
6 impaired.
7 We recommend that the 303(d) listing policy
8 require reevaluation of water bodies listed on previous
9 303(d) lists. Many previous may be inappropriate
10 because of inadequate data quantity and quality;
11 evidence that natural sources have caused or contributed
12 to the impairment; and/or water quality standards upon
13 which listings are based are inappropriate.
14 We recommend reevaluation of the water bodies
15 to ensure that TMDLs are conducted where appropriate and
16 necessary. This recommendation is consistent with the
17 July 2003 draft policy and assist in prior tracking of
18 expenditures of scarce resources.
19 We're concerning the two sections of the draft
20 policy, trends in water quality and alternate data
21 evaluation, may create loopholes for listing water
22 bodies that are not based on solid scientific
23 evaluations. Trends in water quality may be linked to
24 hydrologic conditions such as drought rather than
25 increases in pollutants or degradation of water quality

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1 reports.
2 And we just want to emphasize that there is a
3 need to balance environmental protection with technical
4 scientific integrity, and we feel that this policy goes
5 a long way toward achieving that.
6 This policy makes significant steps towards
7 laying out a methodology to clearly identify the
8 beneficial use of being impacted, as well as the
9 standards that are to be evaluated. And that's
10 something that hasn't always been clear in past listing
11 efforts, and we feel that this is especially important
12 when it comes to dealing with standards.
13 Just some specific comments that we have, we
14 feel that in order to get this program on an even
15 playing field that the State Board should reevaluate
16 existing 303(d) listings to ensure that these listings
17 meet the requirements of the new policy. We feel that
18 this is really important. We feel if a water body
19 couldn't be listed today under the new policy, then it
20 shouldn't be on the 303(d) list, regardless of whether
21 or not there is new data and information on the water
22 body.
23 Now, when these listings are evaluated, maybe
24 some waters may come off the 303(d) list in cases where
25 impairments are undetermined, whether cause of

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1 impairment is unknown, or in cases where data is
2 insufficient in order to determine if an impairment
3 exists. And those are some of the reasons why we also
4 strongly recommend the establishment of a monitoring
5 list. Waters for where there is this type of
6 uncertainty should not be on the 303(d) list.
7 One other specific comment that we have
8 regarding policy is that we feel it doesn't make sense
9 to list a water body for toxicity unless it can be shown
10 that the toxicity is significant from a statistical
11 perspective, that the toxicity is persistent, and the
12 toxicity is associated with an identified pollutant.
13 All of these conditions would be required to
14 successfully complete a TMDL for toxicity. So
15 therefore, we think it makes sense to use a weight of
16 evidence approach when evaluating toxicity. So we would
17 recommend that a change from using toxicity alone as a
18 listing factor, which was proposed as an alternative in
19 the functional equivalent document, to only using
20 Alternative 3, which is the use of a weight of evidence
21 approach.
22 One other technical comment that could be
23 significant in the implementation of the policy is that
24 when considering listing factors such as adverse
25 biological response and degradation of biological

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1 populations, the policy doesn't really provide any
2 guidance on how baseline or reference conditions are to
3 be established.
4 So that's -- as you can imagine, this is going
5 to make all the difference on how these evaluations turn
6 out, what the baseline and the reference condition is.
7 So therefore, we would recommend some additional
8 guidance be provided in the policy on how to establish
9 these conditions.
10 And in closing, we'd just like to commend the
11 State Board for all of their hard work. We think that
12 you have developed a credible and scientifically-based
13 policy, and we support the State Board moving forward
14 with the policy. We understand that it's the State
15 Board's intent to have the policy in place before the
16 next update of the 303(d) list, and we support that
17 approach as well. Thank you.
18 MR. SILVA: Thank you.
19 Mary Jane Foley.
20 MS. FOLEY: Thank you.
21 Good morning. My name is Mary Jane Foley, and
22 I am here today for the Southern California Alliance of
23 PODWS, and I have a card so it will help you. I always
24 have something for the court reporter.
25 Thank you for the opportunity to come and make

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1 some comments. A lot of our members have already spoken
2 this morning. Before I reenforce some of their
3 statements in a very brief manner, I want to do a big
4 compliment to the staff, to Craig and to his -- the
5 people who have worked with him, because all throughout
6 this process they have been so accessible, so helpful.
7 It has been a real pleasure, and they deserve a whole
8 lot of credit.
9 So on the policy, the policy is a real
10 improvement, as a lot of speakers have said. It's the
11 best that has ever existed, in our opinion. We like the
12 standardized approach. We like the transparency. We
13 like the fact that it requires fact sheets, public
14 hearings before the Regional Board which didn't exist in
15 the last go-around, and opportunities to comment before
16 the State Water Board.
17 We believe the one list is problematic. We
18 believe that the State Board should go back to including
19 on the 303(d) list only those waters that do not attain
20 water quality standards due to pollutants for which the
21 TMDL is required.
22 And the reason the one list is scary is that
23 history shows that sometimes in a certain era, everybody
24 understands the rules of the game and makes their
25 assumptions on how this can work out to be fair and

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1 practical, and then the rules of the game change. New
2 people come in, EPA has a different decision tree that
3 they pass down to the State and they say, "No. We're
4 not going to do it that way. They're on the list.
5 They're on list," and there's no getting off the list.
6 And so having experienced that in my lifetime,
7 I think that the need for multiple lists or a couple of
8 lists is critically important to be able to assure the
9 next generation that they don't have to interpret what
10 this generation meant.
11 And then the comments that have been made on
12 the planning list or monitoring list to recognize the
13 areas where the impairments were undetermined or there
14 was insufficient data, I think it's a very pragmatic way
15 to go. Most people really liked the July document, the
16 draft document, and I understand how it got changed.
17 And I am not going to revisit any of that, but the one
18 list, to me, is the number one thing to petition the
19 Board to reconsider.
20 Also, in our comments, in our written comments
21 that will come later, we commend the Board for providing
22 a mechanism for the reevaluation of water bodies
23 identified in the 303(d) list using the listing policy.
24 Once it is approved and we -- I would also --
25 Clayton, who came up, and some of the other people

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1 referenced an ability, when a party requests in writing,
2 to reevaluate water bodies where they think that they
3 were done in -- that the information may be invalid or
4 inappropriate. We support that because of the scarce
5 resources and because anybody who has done research on
6 the 1998 list realizes it was pretty loosely done. And
7 it's nobody's fault. It's just the way that guidance
8 came down at that particular time from EPA to the
9 State.
10 And given the lack of resources, given the
11 desire to look at priority and priority pollutants,
12 priority in where we are going to do these TMDLs, I
13 think the ability to have a party -- you know, and the
14 burden would be on the party to look at some of that --
15 is not an unreasonable request.
16 So we thank you very much for coming and
17 especially for coming to Southern California. And we
18 look forward to working with you on it, and we thank you
19 for this policy.
20 MR. SILVA: Thank you.
21 Rodney Anderson.
22 MR. ANDERSON: Good morning. My name again is
23 Rodney Anderson, and I am representing the City of
24 Burbank Public Works. And I, too, want to commend the
25 Board and staff for putting this policy together and

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1 working on this. I think it is a great improvement from
2 how the lists have been done in the past. To have a
3 transparent policy is going to be very helpful.
4 Last year, when the 2002 lists came out, we
5 made comments regarding a certain listing of Academy,
6 which was the Burbank western channel. And at that
7 time, we submitted a number of data points. They all
8 were nondetects. And yet because there was no policy --
9 it was just said that staff pollutants were low, so it
10 will continue to be listed.
11 Well, with this new policy, it looks like
12 it's going to be transparent. We look forward, when
13 this policy is implemented, that we can get the
14 delistings that we think are justified. So we do
15 appreciate that this is being done.
16 And at the same time, although we think that
17 this policy will be good, we do have a couple of issues
18 that we would like to address. Number one -- and it was
19 just mentioned by Mary Jane, and I am going to add to
20 her comments regarding the reevaluation of some previous
21 listings, the 1998 listings. We are disappointed that
22 all of those listings will not be reevaluated according
23 to this policy. But I think that we recognize that
24 performing a TMDL is much more time consuming than
25 evaluating a potentially wrong listing. So although it

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1 would take a lot of time to reevaluate all of the
2 listings, it's even more time to do TMDLs for those
3 listings.
4 However, at the same time, it is the
5 likelihood that a number of those listings may be
6 justified. We would request that when the State Board
7 is requested in writing from a party to reevaluate a
8 certain water body that that old listing would be looked
9 at. That would allow those listings that we can all
10 agree that yes, there is an impairment, there is a
11 problem, those would not have to be reevaluated.
12 But those where we think that there is a
13 problem should be reevaluated, even in the absence of
14 new data. The reason for this is some of those
15 listings, we believe, were done in a drive-by approach.
16 For example, there are some nuisance listings
17 for the Burbank western channel: algae, odor, and
18 scum. And those that were on the 1998 listing were
19 carried to the 2002 lists. It's unclear to us how those
20 listings were created and what additional data we can
21 even submit to get those delisted. It's unlikely that
22 individual observations will be accepted as new data to
23 have those reevaluated, even though we believe that's
24 how those listings were created in 1998.
25 So to ask for new data on some of these

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1 their staffs. This was a good start at scrutinizing the
2 technical and scientific support used by the Regional
3 Boards for the listing and delisting.
4 Further, we strongly support the State Board's
5 goal of establishing a standardized approach for
6 assigning water bodies to the State's 303 list.
7 We endorse the inclusion of requirements for
8 data quality and quantity, requirements for consistent
9 and statistically valid data evaluations, and
10 implementation provisions. The inclusion of such
11 requirements would immediately improve the scientific
12 merit of a 303(d) list.
13 Further, we strongly support the inclusion of
14 a planning/monitoring list. The draft December 2003
15 listing policy removed the planning and monitoring list,
16 which were in the July draft policy. A planning and
17 monitoring list, or a watch list, is important for cases
18 where the impairments are undetermined; for example,
19 unknown toxicity, cases where data are insufficient to
20 determine if an impairment exist, and in cases where
21 water quality standards may be inappropriate.
22 Water bodies placed on the planning and
23 monitoring list would need to be studied further. They
24 could be placed on the 303(d) list of impaired or not
25 listed as not impaired. Use of a watch list has been

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1 nuisance listings is very difficult for us, and we know
2 that the kind of data that was probably done to get the
3 '98 listings won't be accepted now. So we would want
4 some of those reevaluated when requested in writing.
5 The second issue I would like to talk about is
6 the trends in water quality. We disagree that trends in
7 water quality should be used as a criterion to list
8 water segments that would not otherwise meet conditions
9 in the draft listing policy. This criterion includes
10 the inclusion of water segments on the 303(d) list in
11 the absence of information that water quality objectives
12 are exceeded or that beneficial uses are impaired.
13 As stated in the FED, there are no widely
14 accepted approaches for documenting trends, and the data
15 is often difficult to interpret.
16 The draft listing policy does describe five
17 very general guidelines for determining these trends,
18 but those guidelines are somewhat ambiguous and lack
19 specific requirements for consistent, statistically
20 valid data evaluations.
21 For a normal listing with data, there is a
22 requirement that 10 percent of samples with a confidence
23 level of 90 percent, using binomial distributions, is
24 how one gets listed.
25 For the trends, it's not clear that -- you may

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1 strongly recommended by the National Academy of Sciences
2 in its report to Congress, and it would help avoid
3 inappropriate listings, unnecessary TMDLs, and unwise
4 use of resources.
5 The City of Signal Hill is also concerned with
6 provisions in the draft policy which will allow listings
7 based on pool data. As written in the December draft
8 policy, a segment of water body could be placed on the
9 303(d) list if just one sample from that segment reaches
10 water quality criteria and samples in adjacent segments
11 exceeded criteria. We request that the draft policy be
12 amended so that each water segment is required to be
13 evaluated independently, which is a much more accurate
14 indication of actual water conditions.
15 Further, to ensure development of TMDLs were
16 appropriate and necessary, we specifically request that
17 the Board require a reevaluation of each water body
18 carried forward from the 1998 303(d) list. Many
19 listings from the 1998 303(d) list may be inappropriate
20 because of inadequate data quantity or quality, evidence
21 that natural sources have caused or contributed to the
22 impairment. Water quality standards upon which listings
23 are based are inappropriate. This recommendation is
24 consistent with the July 2003 draft policy that insists
25 on prioritizing water and State and local resources.

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1 have zero exceedances and still get listed. There is no
2 concrete guidelines on that. Perhaps specific
3 guidelines, such as at least 5 percent have to be -- of
4 exceedances, or there is a 25 percent increase in the
5 pollutant concentrations over a five-year period, or if
6 there is a minute number of samples. The only statement
7 is that there are three years, and they have to look at
8 some general guidelines. So those criterion are so
9 subjective, we feel they need to be nailed down a little
10 bit more if trends are to be used at all.
11 And that concludes my statements. I
12 appreciate again you coming down here and taking the
13 time to listen.
14 MR. SILVA: Thank you.
15 Phyllis Papen.
16 MS. PAPAN: Good morning. My name is Phyllis
17 Papen, and I am speaking here today on behalf of the
18 City of Signal Hill.
19 I want to thank the Board for the opportunity
20 to comment today. First, I would like to thank the
21 State Board and staff for the recent progress on the
22 State's 303(d) list.
23 During the preparation of the 2002 303(d)
24 list, State Board staff reviewed and analyzed the
25 recommendations submitted by the Regional Boards and

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1 Finally, the City of Signal Hill continues to
2 be concerned that the Los Angeles River estuary has
3 several listings related to historic use of pesticides
4 and lubricants. Among these are chlordane, DVT, lead,
5 PCPs, and zinc. These are all listed because of
6 presence in sediment.
7 Instead of being listed, they should be placed
8 on a watch list. It would appear to be impossible to
9 establish a traditional TMDL for legacy pollutants no
10 longer in use such as chlordane and DVT and PCPs. Some
11 other mechanisms should be used to deal with such
12 conditions. Such historic pollutants cannot be
13 controlled by controlling current discharges.
14 We want to also support the comments of the
15 Coalition for Practical Regulation given by Richard
16 Watson, and thank you for the opportunity to speak
17 today.
18 MR. SILVA: Thank you.
19 Larry McKenney.
20 MR. MC KENNEY: My name is Larry McKenney from the
21 County of Orange, and I am here representing the Orange
22 County Flood Control District in our 34 cities.
23 And I hesitate to even suggest that I can add
24 to anything. So rather than going through any specific
25 comments, I just want to make one suggestion

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1 specifically to you, the Board members, for your
 2 thinking as you hear all of these comments and then
 3 later when you're evaluating what staff does with all of
 4 this; and that is that these questions of whether there
 5 should be multiple lists or whether there can be
 6 subcategories under the list, that's an important
 7 question, and also the question of the reevaluation
 8 procedure.

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

18 When the implementation of 303(d) results in
 19 so many water bodies being listed that we have decades
 20 of backlog, then the system has failed to use it as a
 21 prioritization tool. So however we resolve the issues
 22 of the multiple lists or sublists and how existing lists
 23 are reevaluated, to me the key policy consideration is
 24 the process has to work as a way of prioritizing the
 25 highest priority issues.

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

3 MR. SILVA: Thank you.

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

9 (Recess.)

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

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

15 And I would like to reiterate, like the other
 16 agency speakers, that finally as to both new issues, I
 17 wanted to reiterate some of the challenges in dealing
 18 with analytical chemistry that pops up. Essentially we
 19 are concerned about how these new rules interact with
 20 things like CTR, when we have seen past listings based
 21 on very, very low and unusual hardness levels that
 22 perhaps -- I'm sorry. I should be clear. CTR listings
 23 for metals that are interacting with very, very low
 24 hardness measurements that are essentially atypical and
 25 require the CTR to be extrapolated beyond what is

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1 represented in CTR documents at the level of, like, two
 2 parts per million hardness when the CTR tables stop at
 3 25.

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

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

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

18 MR. SILVA: Thank you.

19 Robin Rierdan.

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

25 I am here because I am concerned about this

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

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

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

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

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1 that water, but yet they were swimming in that water.

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

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

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

25 So I guess what I am asking you is as you go

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

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

24 MR. SILVA: Thank you.

25 Mark Gold.

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1 MR. GOLD: My name is Dr. Mark Gold. I am the
2 executive director of the group Heal The Bay, and we
3 have a presentation that should last about half an hour
4 or so from the environmental community.
5 First off, we would like to say right off the
6 bat that we support the testimony given last week by
7 members of the pact, and what you are going to get today
8 is mostly an overview of our comments and a great deal
9 in more specificity will be in the letter submitted by
10 the 18th. So I just want to make sure that you got
11 that.
12 I also wanted to state that we support the
13 bulk of EPA's comments that were given last week as
14 well. We were very happy to see that we see eye to eye
15 with them on most of the issues and concerns that they
16 had on the listing and delisting process as well.
17 Our goal at Heal The Bay is to see more
18 certainty in the listing and delisting process, which
19 could be obtained through a more rigorous and better
20 document listing process. And we believe that the
21 State's effort to date is definitely a start to move in
22 that direction, but not even close to where we need to
23 go to adequately protect water quality in the State of
24 California.
25 I am going to go over some of the top issues

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1 flipping it around, did this group of samples meet the
2 standards with X confidence? So that's a different
3 approach that doesn't saddle you with the arbitrary
4 10 percent as you have right now.
5 On the second major area, that is the
6 requirement that the pollutant or pollutants that cause,
7 observe toxicity or another biological response must be
8 identified before a water body can be listed or a TMDL
9 can be developed, this must be removed from the
10 document. The requirement will totally create a
11 backstop on cleaning up the most polluted waters in
12 California.
13 The overall result of this requirement will be
14 that water bodies exhibiting the most severe impact such
15 as toxicity, adverse biological response, and
16 degradation of biological population communities will be
17 difficult, if not absolutely impossible, to lift because
18 the pollutants that are causing these impacts must be
19 identified. And as we all know, it's not that easy to
20 do that. In addition, water bodies already listed for
21 this may be delisted, which is a major concern.
22 This cause and effect link typically cannot be
23 established through simple or standardized tests.
24 Instead, special studies are required. The listing
25 policy is shifting the burden of establishing absolute

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1 that our organization has. But like I said, it's not a
2 complete list in that one of our concerns is that all
3 too often the current approach results in sort of an
4 approach of when in doubt, take it out, or don't list
5 the water body at all.
6 And one example that I heard, that this is
7 much better than a watch list approach, which will never
8 lead to a cleanup, I can't imagine any approach where
9 anything on a watch list would actually get cleaned up.
10 Looking at the statistical approach that was
11 used to list, we believe this needs to be modified. The
12 current approach will be failure to list impaired water
13 bodies. We understand there needs to be a mechanism
14 that allows for uncertainty and variability and error.
15 The three levels of safety margins built in to
16 ensure clean waters are not listed is the approach
17 through the binomial approach. And what you see is --
18 the result is overcompensation that will lead to a
19 failure to list truly impaired waters.
20 So, for example, you have 10 percent allowable
21 exceedance plus a confidence variable of 90 percent plus
22 a null hypothesis that starts with the assumption that
23 the water is clean. So you're building on this level of
24 uncertainty with the end result being less water quality
25 protection.

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1 cause to the State Regional Boards.
2 The end result of this policy will be that
3 water bodies shown to have exceed numeric standards
4 through chemical analysis will be easier to list than
5 those water bodies that are exhibiting more severe
6 impacts, which are often caused by low levels of
7 multiple pollutants.
8 The trend at the federal level on regulation
9 and research is to focus on biological effects and
10 impacts, because the whole point is to protect our water
11 resources, yet this listing policy is leading California
12 in the exact opposite direction.
13 One thing, I think, that's very critical to
14 point out is that this exact debate has occurred for the
15 last 25 years on the whole 301(h) waiver issue, and that
16 argument made by the dischargers has lost time and time
17 again where if there is impairment, then you must indeed
18 upgrade your facilities. That is what you have seen in
19 301(h), and that has worked quite well, I think, for the
20 State of California.
21 On the third major point, delisting policy
22 must establish basic minimum requirements as provided
23 for in the listing policy and must provide much more
24 certainty than there is today. So we recommend a policy
25 clearly that includes the following:

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1 So the overall result, if you stack them
2 together, the safety margin, to protect against listing
3 clean waters, is allowing them more than a 10 percent
4 exceedance rate. Instead, as high as a 30 percent
5 exceedance rate is allowed on -- and even with a very
6 robust sample size of 100, the allowable exceedance rate
7 is as high as 15 percent. So that is a major problem.
8 We strongly urge the Board to correct this
9 problem. First and foremost, if the binomial approach
10 is used, the setup, the model should be changed to
11 ensure the polluted waters are listed. In other words,
12 flip the null hypothesis to ensure with a confidence
13 limit that the water body is clean before deciding not
14 to list, not the other way around as it is right now.
15 Another alternative that might be looked at is
16 to consider using a simpler approach that doesn't assume
17 a 10 percent exceedance rate in order to counter for
18 variability, uncertainty, and error.
19 For example, a simple T test in which the
20 amino samples compared to the standard with a certain
21 confidence limit can be used and would account for
22 variability, uncertainty, and error.
23 And the sorts of questions that would be asked
24 in that statistical approach is did this group of
25 samples exceed the standard with X confidence? Or

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1 A minimum of three years or more new data must
2 be used in the evaluation for delisting;
3 Data must be representing conditions that
4 occurred in the water body during the sample period;
5 To be represented, the following must be
6 considered: sampling frequency, temple of distribution
7 of samples, and more.
8 Critical conditions -- this is very
9 important -- must be sampled, and this includes a
10 representative number of wet weather samples during
11 varying levels of storm duration intently. You can
12 imagine an approach that doesn't look at critical
13 conditions that would lead you to the wrong outcome.
14 Also, the policy related to small sample size
15 must be modified as well. The number of samples that
16 exceed a standard threshold for small sample size is not
17 acceptable, and in most cases 25, 30 percent. This will
18 result in a failure to list many impaired water bodies.
19 So our recommendation in this particular case
20 is best professional judgment. You must consider the
21 number of exceedances and exceedance rates. If there are
22 only three samples but all three exceed, then indeed
23 that should be listed. Also, the magnitude of these
24 exceedances and the severity of the measure you are
25 actually evaluating, toxicity versus a potential

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1 pollutant.
2 So one example, of course, is a fish kill. If
3 there is a fish kill and it occurs, obviously that's the
4 sort -- and it occurs on a periodic basis -- that's the
5 sort of water body that should be listed, even if there
6 are small sample sizes.
7 All right. Since we do spend a lot of time on
8 the area of bacteria, we do want to talk a little bit on
9 the delisting policy for bacteria in water. And the key
10 thing here is really the reference approach needs to
11 apply to both listing and delisting. There is a big
12 problem with the existing language that's inconsistent.
13 For example, let's say a beach is monitored
14 daily during the AB411 time frame for six months.
15 Approximately 180 samples would be collected. According
16 to Table 4.1, 12 samples could exceed on the standards,
17 which means 12 postings or 12 closures, yet the water
18 body could be delisted.
19 Then, based on the listing provisions, it
20 would immediately be listed again for Santa Monica Bay
21 beaches where the reference location requirement is zero
22 days. So it just doesn't make sense. The key thing
23 here is that you need to be consistent in only having a
24 reference-based approach on listing in this particular
25 circumstance. And if you can't use the approach, the

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1 one that was given, the arbitrary 10 percent and
2 4 percent, is based on data for a five-week period. So
3 it's certainly not enough to make a regulatory decision.
4 And then lastly, because I know I have gone
5 way too long, is that if there is an enforcement
6 program, then the pollutant can't be listed on the
7 303(d) list. So that's throughout the document, and
8 it's very, very confusing in a lot of places. Instead,
9 it gets put on the enforcement list.
10 And there are specific examples that talk
11 about trash that are most troubling, as anything else.
12 If you have local anti-littering ordinances, for
13 example, one can interpret that there is no way that
14 body would be 303(d) listed, regardless of whether or
15 not there is severe water quality impairment.
16 And to even take a step further, there would
17 be no listing if there is any mechanism for enforcement.
18 So, for example, if you have an MS-4 permit that
19 requires cleaning and street sweeping, since that is an
20 enforceable program and you have that NTS permit for
21 that, this would ensure that no urban receiving waters
22 would get listed for trash. Clearly, this can't be the
23 intent of the State Water Resources Control Board in why
24 you have strongly upheld the trash TMDL impact at times.
25 And honestly, trash is a major, major impairment issue.

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1 And then on spatial and temporal guidelines,
2 the current ones are completely nonsensical. Right now
3 it says if you have two samples that are collected
4 within 200 meters of each other, it would be considered
5 the same station. And this is really not protective.
6 If you look at the example of beaches where you have a
7 storm drain and then 200 meters away you have open
8 beach, and if you combine those together, basically you
9 would be eliminating many of the violations right in
10 front of the flowing storm drain and the actual
11 pollution source.
12 The other thing is that most MPDS permit
13 programs are set up where you have the outfall and
14 you're looking at water quality impact as well as the
15 outfall and below the outfall. And if you were to
16 combine those together, that just makes no sense.
17 And the same sort of approach occurs for
18 spatial distribution where if you collected samples
19 within the same week -- basically they were saying
20 combine them -- then you can imagine for storm water how
21 ridiculous that would be and for beach water quality how
22 silly that would be as well.
23 With that I would like to pass it forward to
24 Sujatha from Environment California. Thank you.
25 MS. JAHAGIRDAR: Thank you. My name is Sujatha

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1 Jahagirdar. I work with Environment California, and I
2 would just like to take a few minutes to focus on some
3 of the real world impacts of this proposed guidance
4 policy. I will focus on a lot of the technical issues,
5 but I want to just bring it down to a concrete level and
6 talk about specific waterways that we believe are in
7 danger of dropping off the 303(d) list if this process
8 goes forward.
9 So the questions that I would like to ask are
10 what types of waterways would never have been listed in
11 the first place if this policy were to be adopted as it
12 is today?
13 And the second question is what types of
14 waterways will drop off the list if this current
15 criteria is applied to waterways that are already on the
16 303(d) list?
17 And the answer to those questions is that the
18 impact will be that real waterways that are part of
19 communities that are part of the fabric of this state
20 that people fish in, swim in, and reply upon to escape
21 the hustle and bustle of their daily lives will never be
22 cleaned up.
23 And specifically I would like to talk about a
24 few examples. The first is San Antonio Creek. And
25 San Antonio Creek is a small little waterway that runs

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1 through the center of Ojai in Ventura County, and it's a
2 beautiful creek. There is a park around it in Ojai
3 itself, and then as it exits the city, it runs into
4 agricultural land where it runs through orchards of
5 avocado trees and orange trees, and it's seen as central
6 to the identity of this part of Ventura County so much
7 so that the Ventura Stream Team adopted this creek as a
8 waterway that they want to go ahead and protect.
9 And they wanted to protect it not only for its
10 aesthetic value and as a place of refuge for the
11 community, but also because it's home to the unarmored
12 three spike stickleback, which is an endangered species
13 that was put on the federal endangered species list in
14 1970.
15 And so through the testing that the Ventura
16 Stream Team did, they were able to identify nitrate as a
17 contaminant in the waterway. And what nitrate does
18 is -- it's a product of -- it ends up in waterways
19 mostly through runoff from agricultural lands.
20 And when it's in water, what it does is it
21 encourages the growth of algae. And when you have lots
22 of algae growing in a waterway, you have a lot of
23 bacteria that feed on the algae which then suck out the
24 oxygen from the waterway. And so in effect what you do
25 when you have a lot of nitrate in a waterway is

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1 suffocate the wildlife that are actually present in the
2 waterway and threaten species like the unarmored three
3 spike stickleback.
4 So nitrate is a huge problem, and the Ventura
5 Stream Team identified that nitrate was a problem in
6 much greater than 10 percent of the threshold that were
7 originally put on the list. In fact, they found that
8 4 out of 23 samples demonstrated elevated levels of
9 nitrate above water quality standards.
10 Unfortunately, however -- and the Los Angeles
11 Regional Water Quality Board acted upon this data and
12 consequently put this waterway on the list.
13 Unfortunately, with this current policy, you would now
14 need 5 of the 23 samples to have listed this waterway in
15 the first place. So San Antonio Creek is the type of
16 waterway that we may see never put on a list in the
17 future or may be threatened if the suggestion from the
18 earlier speakers are taken to reevaluate the list
19 immediately and take out waterways that don't meet the
20 policy.
21 The second waterway I would like to highlight
22 is the San Gabriel River, its listing for zinc. The
23 San Gabriel River runs through East Los Angeles. It's
24 one of the few common threads that we have of this
25 massive sprawling county that actually ties together

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1 dozens and dozens of cities and communities.
2 And the San Gabriel River, unlike the
3 Los Angeles River, actually is aesthetically and
4 culturally a resource because it hasn't been completely
5 channelized. So you a lot of soft bottom areas of this
6 waterway already, and we have seen a massive -- in
7 recent years, a massive movement to revitalize the river
8 even more.
9 So at the federal level you -- Congresswoman
10 Hilda Felice (phonetic) just got a law passed that would
11 study the river for the possibility of it becoming a
12 national park. And also, various communities are going
13 forward with initiatives to put pocket parks along the
14 river with the ultimate vision being to create a
15 greenway throughout the entire region of Los Angeles
16 around this waterway.
17 And so again, because it's such a community
18 resource, volunteers went ahead and sampled the waterway
19 for contamination and found elevated levels of zinc.
20 They found 4 out of 26 samples contained zinc at
21 dangerous levels. And zinc is a toxin. It poisons
22 aquatic wildlife.
23 And, unfortunately, though, under this
24 particular -- under the proposed guidance policy, you
25 would need six samples of zinc exceedances to meet the

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1 requirements of the binomial approach. So again, we
2 have an example of a waterway that is clearly
3 contaminated, has a lot of community investment, yet it
4 would never have been put on the list to get cleaned up
5 in the first place and is in danger of falling off the
6 list if the suggested revisions are implemented.
7 And then finally, the last waterway I would
8 like to highlight -- and I would like to also emphasize
9 that these are just poster children that we were able to
10 pull out from just a quick perusal of the list. I don't
11 pretend to be a techie. We believe that there are
12 dozens and dozens and dozens of more waterways that are
13 at risk, but I thought it was important to highlight
14 what we were able to pull out just by a cursory glance.
15 And the third and final waterway that I'd like
16 to talk about is Coyote Creek. And Coyote Creek for me
17 anyway, when I was looking at these waterways -- and
18 it's as much an issue of protecting specific wildlife
19 and habitat, but it's more an issue of the community and
20 the resources that it has invested in this waterway.
21 Coyote Creek runs in the northern part of
22 Orange County, and it's a major part of the local
23 economic fabric. It actually supplies water and is part
24 of the aesthetic environment of one of the most famous
25 golf courses in Southern California. It was a golf

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1 course designed by Jack Nicklaus, and it's a major part
2 of the local economy.
3 This facility is largely dependent on
4 maintaining a beautiful, aesthetically-pleasing, clean
5 waterway that runs through it, and Coyote Creek was
6 listed under the 2002 process for selenium contamination
7 with 5 samples out of 26 exceeding. Unfortunately, if
8 they were under the proposed policy, you would have
9 needed 6 samples to list it.
10 So again, Coyote Creek would never have been
11 on this list, and selenium would never have been
12 identified as a problem, and you would have a selenium
13 contaminated waterway running through one of the
14 region's most famous golf courses.
15 So in closing, I would just like to emphasize
16 that when we're talking about this policy, what we
17 really are talking about are very concrete waterways
18 that are in jeopardy of falling off the 303(d) list.
19 And what this means is a very real impact to communities
20 and to the local economy, and I would urge you to look
21 with great care at the suggestions of my colleagues in
22 making your final determinations. Thanks.
23 MR. SILVA: Thank you.
24 And I would request that you keep it closer to
25 five minutes. Most of you have been going about ten or

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1 so. If you have similar comments, just say you agree
2 with the comments.
3 MR. WILSON: Thank you. My name is Rick Wilson. I
4 am the coastal management coordinator with the Surfrider
5 Foundation national headquarters in San Clemente.
6 Surfrider believes that the proposed policy is
7 not consistent with the use of the precautionary
8 principle. In fact, it's almost the reverse. As was
9 stated before, it seems like the way that it's worded in
10 several places is to when in doubt, throw out the data.
11 You know, when in doubt, don't list or delist. And it
12 also seems to encourage not testing, dischargers not
13 testing. Because if they don't have enough data, the
14 criteria and the policy won't allow a waterway to be
15 listed, or it would cause a waterway to be delisted.
16 Specifically, one of the instances that we're
17 concerned about is the requirement for five exceedances
18 to list a water body, and we believe there are several
19 instances when the existing data, even though it's not a
20 lot of data, clearly indicates that there is a problem,
21 and the water body would not be listed.
22 There are places where the data -- there are
23 literally 100 percent of the data, three or four
24 samples, show exceedances and the water body would not be
25 listed. It does not allow for what Mark Gold referred

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1 to as best professional judgment to be used in listing
2 such water bodies.
3 Just one example of a water body that might be
4 the case is Dana Point Harbor. Dana Point Harbor is
5 currently listed for copper, but there is very limited
6 data.
7 However, it's clear to us -- and I think
8 anybody who looks at the situation and there is a reason
9 that it's reasonable to be listed, it's very well known
10 that copper is a major problem causing contamination in
11 harbors and marinas. And so to not list Dana Point
12 Harbor for copper would not make sense. It would not be
13 consistent with the precautionary principle, and it
14 would not be consistent with best professional judgment.
15 The only other comment I wanted to make had to
16 do with the toxicity. We are strongly in favor of
17 keeping the requirement to list bodies due to toxicity
18 testing exceedances, even in cases where a pollutant is
19 not identified.
20 There are clearly cases where there are fish
21 deaths where there are high mortality and toxicity
22 testing where there is a problem with a water body and
23 it should be tested. That doesn't preclude, and it
24 should include additional testing to identify the
25 pollutant, but that doesn't mean that the body should

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1 not be listed for toxicity. So we encourage you to keep
2 that requirement in the listing procedures.
3 Thank you.
4 MR. SILVA: Thank you.
5 MS. SOLMEN: Hello. Thank you for the opportunity
6 to speak with you today on this important issue. My
7 name is Gabriel Solmen. I am an associate attorney at
8 San Diego Baykeeper, and San Diego Baykeeper is a
9 nonprofit organization committed to water quality
10 protection throughout the State. Our purpose is to
11 preserve, enhance, and protect the state's coastal
12 estuaries, wetlands, bays, and other waterways from
13 illegal dumping, toxic discharges, and habitat
14 degradation.
15 And as a San Diego resident and a clean water
16 advocate, I am concerned about this draft guidance. We
17 have worked hard through San Diego Baykeeper to work
18 with regulators and the community to identify these
19 impaired waters, and we are making great strides through
20 the TMDL programs to clean up these areas.
21 And my concern, like those before me, is that
22 some of these current waters would not have been listed
23 under this draft policy. And I will just give you a few
24 examples from Region 9 for that.
25 One, as we have just mentioned, Dana Point

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1 Harbor is listed for copper. And the problem there is
2 that the sampling that was done was done during a storm
3 event. But even though we know that the copper is
4 coming from the boat hauls and it's becoming persistent
5 in the harbor, because the samples were done during a
6 storm event, they would not be looked at for the draft
7 guidance. And so if the source of the problem is clear
8 and ongoing, as it is in so many harbors and marinas,
9 why should the timing of the sampling that was done
10 prevent the harbor from being listed?
11 Second is the San Louis River, which was
12 listed for cordite. And over four years, the river was
13 sampled 31 times with 21 exceedances, which is severe.
14 But under the draft guidelines, the river would be
15 clearly listed if all of these samples were done at the
16 same time. But since they were done over four years,
17 three samples here, four samples there, it becomes
18 unclear whether you can accumulate over the years. The
19 draft guidelines are silent. I can't find any clear
20 guidance there.
21 And if you look just on the San Louis River
22 until the last year of the data, four samples were
23 taken, and all four exceeded the standard. Clearly
24 something has gone on there; but under the draft
25 guidelines, the river would not be listed.

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1 Section 3.1.11, and I begin to try to use this as the
2 way to use scientific knowledge that any scientist would
3 look at. But I get to this, and it says at a minimum
4 the justification must demonstrate, and then I get to
5 that measurements can be analyzed using a scientifically
6 defensible procedure that provides an equivalent level
7 of confidence as the listing factors in Section 3.1 and
8 tests the null hypothesis that water quality standards
9 are attained.
10 Quite frankly, I didn't come here -- I came
11 here because I wasn't testing a hypothesis, and I have
12 been precluded from using the alternative data section
13 because it requires me to test a hypothesis when I have
14 five or six different things that are telling me that
15 this water is impaired such as high nitrate, high
16 phosphate, high chlorophyll, and there are dying fish
17 gasping for a breath.
18 I am not in this to test a hypothesis.
19 Particularly, I have real world examples where that
20 condition actually exists and there are five or six
21 other streams where we have already seen those things,
22 but I am unable to list this water body because I am
23 unable to apply the multiple lines of supporting
24 evidence.
25 Again, in the alternative data analysis, that

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1 And then I will just tell you about
2 Lake Hodges, which is currently listed for pollar
3 (phonetic). And again, you have the same issue.
4 Although the lake has 100 percent exceedances every time
5 it's measured, at least from '98 to 2000, it would not
6 listed under the draft guidelines. And the problem
7 there again is the sample sizes are too small to be
8 counted under the binomial model. So even though we
9 know that there is a consistent problem there, it would
10 not have been listed.
11 So I just offered these examples as evidence
12 that the draft guidance policy doesn't always track
13 common sense or real life experience, and I urge you to
14 remove the confusion and rigidity from the language in
15 the draft guidelines. Thank you.
16 MS. SUTLEY: I have a question before you step
17 down. Under 3.1.11, the alternative data evaluation, do
18 you have a comment on whether that would overcome some
19 of the issues you and some of the previous speakers have
20 raised, or do you have any comment on that section?
21 MS. SOLMEN: Yeah. Absolutely. And perhaps I am
22 not the best person to speak to this, and I think that
23 other speakers can comment on this, but one thing is
24 that the requirements for the ADE are relatively
25 unclear. And I think that for some of the requirements,

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1 kind of demonstration is one of the principal reasons
2 you find Regional Boards themselves who have to use this
3 information, raising objections about this policy.
4 There needs to be -- while I hear the regulator
5 community say they feel that this is nebulous, I think
6 that Regional Board staff and the environmental
7 community feel as though there must be room for more
8 scientific method on this thing. Hypothesis testing is
9 not the only science applied to water quality.
10 In another less technical area, we hear talk
11 of multiple lists. I think that most of us in the
12 environmental community feel as though this draft of the
13 policy is much improved over the previous one because
14 there are less lists.
15 In fact, there are two lists, one on which
16 largely goes unnoticed. The Clean Water Act requires
17 that you make a 305(b) list and a 303(d) list. Nobody
18 in this room is talking about 305(b). 305(b) is
19 effectively this planning list, this watch list. The
20 downside of trying to create each of these other lists
21 is that Regional Board staff time has to be spent
22 jumping through administrative hoops to prove a program
23 is enforceable or to establish yet more criteria. The
24 fact is 305(b), the statewide water quality assessment,
25 is required.

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1 we get into problems with the binomial model. So I
2 don't think that it's a complete solution.
3 MR. PARADIS: I am Dave Paradis. I think I will
4 change things around a little bit and tell you where she
5 left off. Let's talk for a moment about the
6 relationship between the binomial approach, a one-size
7 fits-all hypothesis test. Okay? Science doesn't always
8 rely upon hypothesis testing to make decisions. Quite
9 frequently you need multiple lines of evidence. We
10 heard one earlier that dissolved oxygen alone was
11 inappropriate from making a nutrient determination.
12 If we looked at Table 3.1 in the sample counts
13 here, your statewide monitoring program is making
14 wonderful progress on standardizing quality assurance
15 and on standardizing methods for the first time in the
16 State of California, but it does not have the resources
17 to come anywhere near the sample counts in Table 3.1.
18 Typically they measure conventional water
19 quality once a month, typically toxics and metals and
20 the like, and toxicity, if measured at all, takes place
21 once or twice a year. So normally we could take a year
22 of sampling, have a few months of having nitrate, high
23 phosphate, high chlorophyll, load me up, I may never
24 meet these sampling requirements.
25 So I go over to the next procedure, which is

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1 Establishing a planning list or a monitoring
2 list in particular, we have SWAMP that is working
3 statewide. It's an amnio monitoring program encouraged
4 by the legislature to be established and so forth. That
5 program has very finite resources. It can't be an amnio
6 monitoring program and effectively cover the State of
7 California if it is redirected whenever someone finds a
8 problem.
9 If there were no monitoring list, you might
10 more aptly title it the Section 5267 list, because it's
11 the only place you're going to get the resources to get
12 the sample counts. I don't think the dischargers would
13 find that pleasant, and I don't think it's
14 scientifically necessary to do things like collect 500
15 samples, for example, of nitrate in a stream. You don't
16 need anywhere near those sample counts to understand
17 what is going on in the water.
18 In this other area that we have heard some
19 comments on today regarding necessity of identifying the
20 specific pollutant associated with toxicity, I can
21 appreciate some of the regulated community's concerns
22 because that specific pollutant may have economic
23 consequences for them. But there is another side of the
24 coin, and this policy must work on a statewide level.
25 I have been working on the AG waiver program

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1 and have made some new friends, and I happened to have
2 met a fifth generation family farmer up in the Salinas
3 Valley who cares about water quality. This policy says
4 if that water in the stream is toxic, he's got to -- you
5 know, somebody has got to ID the pollutant, most likely
6 him because there is no money within the State to do it.
7 So that means he will have conduct TIEs,
8 toxicity identification evaluations. These things cost
9 about 4 grand a piece. So if you want to do two or
10 three of them, make sure you're right. So at \$12,000,
11 you're committed to identifying the specific pollutant.
12 Well, thank God this policy wasn't in effect
13 last year. He put a retention basin in. It doesn't
14 even reach the stream anymore, and he dug a really
15 good-sized hole for 11 grand. This policy is going to
16 make him standard in a lab instead of on the ground.
17 That kind of breach of common sense and the
18 absence for the flexibility of the Regional Boards to
19 apply that common sense still does exist in this
20 document. I understand it's a difficult process to
21 serve the needs of the entire state and the needs of the
22 dischargers and the water quality, but you have to take
23 into consideration those kinds of economic realities as
24 well.
25 I guess in closing, just maybe one more

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

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1 spent may well end up for naught unless the Board finds
2 a way to make this policy consistent with the EPA and
3 the Regional Board staff. Thank you very much.
4 MR. SILVA: Thank you.
5 MR. EVERETT: Conner Everett, executive director of
6 the Southern California Watershed Alliance.
7 I would like first to thank you and staff for
8 all of the efforts that have gone into this process, for
9 we have worked to try to achieve a consensus. I realize
10 here that we have brought up a lot of issues we have. I
11 would really commend the effort that has got us to this
12 point and say that we're not just saying what is wrong
13 with this process but specific areas that we think can
14 be improved and that we will come up with alternatives,
15 and I thank you for extending the time for that as a
16 group.
17 I also want to thank people who came with some
18 very specific Southern California perspectives. You
19 know, we have potentially five Regional Water Control
20 Boards that influence this area in Southern California,
21 and I'd add that we have a very different set of
22 circumstances than other areas.
23 However, as I appreciate Robin Rierdan's
24 comments who comes from the inland area of the San Diego
25 River, our rivers and creeks, even when they are

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1 channelized, especially when they have soft bottoms, are
2 used by children. I have been fishing in the LA River.
3 When I was a child, I caught salmon and steelhead, not
4 as my grandfather did in all of the rivers of Southern
5 California, but they were still remaining in rivers all
6 the way down to the Mexican border. It's not like
7 everything is beyond saving at this point.
8 The mention of Ojai where I was present at the
9 Ojai Basin Groundwater Agency and the San Antonio Creek,
10 which runs right through the center of town and a park
11 was built around it, most notably for its tennis
12 tournament, once had a cow get stuck right in the tunnel
13 of what's underneath town. That built up all kinds of
14 problems obviously, and since then they have a detention
15 basin upstream to try and deal with that. I just wanted
16 to point out that there are some practical points here.
17 There are also some very proactive solutions
18 to some of these programs. I live in Santa Monica which
19 has its dry weather storm water treatment plan built as
20 an art project right next to the Santa Monica pier which
21 captures what was the runoff which created a pollution
22 hot spot for children playing in the water and the
23 lagoon just short of the Santa Monica muscle beach area
24 and the ocean. That is now cleaned up. That water is
25 used for -- and it's kind of a process that you can walk

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1 through and see it. It's used for irrigation, and it
2 keeps the water clean at the beach.
3 These kinds of proactive approaches need to be
4 used by the cities of the dischargers rather than
5 spending the time which, we feel, is asking to go back.
6 We hope you're not going back to the '98 listing. We
7 hope that at this point we're going to go forward with
8 this process and really make it work for everybody
9 across the area.
10 I have heard certainly of the precautionary
11 principle which was brought up. I notice there are
12 three consensus items on page 5 of the document that
13 talk about the issue of transparency, but also to do
14 active outreach in diverse geographic areas. They are
15 very much apparent in Southern California, especially
16 across the urban areas where the value of park land --
17 and if it isn't existing park land, people are getting
18 into these streams and rivers as they did in 17 lakes
19 many years ago and using any available water, whether
20 that water is considered drinking water or not.
21 So I think, really, the stakes are too high
22 not to consider the pollutants here. I am sure we have
23 many questions, including some of the legalities. I do
24 not want to say we haven't appreciated all of the time
25 and effort of those of us that were on the pact and

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

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