

BOARD MEETING
STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD

JOE SERNA JR./CALEPA HEADQUARTERS BUILDING
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Tam Doduc, Chairperson

Mr. Arthur Baggett

Mr. Charlie Hoppin

Dr. Gary Wolff

STAFF

Mr. Tom Howard, Chief Deputy Director

Ms. Beth Jines, Chief Deputy Director

Mr. Michael Lauffer, Chief Counsel

Mr. Steven Blum, Staff Counsel

Ms. Jesse Maxfield, Environmental Scientist

Mr. Craig Wilson, Senior Environmental Scientist

ALSO PRESENT

Ms. Jose Angel, Colorado River Basin Regional Water
Quality Control Board

Mr. David Arwood, Karuk Tribe

Ms. Beth Bax, Los Angeles County Sanitation Districts

Mr. Lawrence Bazel, Big Bear Municipal Water District

Mr. Steve Bigley, Coachella Valley Water District

Mr. David Bolland, Association of California Water
Agencies

Mr. David Bradshaw, Imperial Irrigation District

Ms. Regine Chichizole

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. MaryLynn Coffee, Newhall Land & Farming

Ms. Dana Rose Colegrove, Yurok Tribe

Mr. Kevin Collins, Lompico Watershed Conservancy, Santa Cruz Group Sierra Club

Ms. Pamela Creedon, Central Valley Regional Water Quality Control Board

Mr. Wayne Dyok, Plumas County

Ms. Sara Everitt, Pacific, Gas & Electric

Mr. Tim Frahm, San Mateo County Farm Bureau

Ms. Starla Goff, The New Algae Company

Dr. Mark Gold, Heal the Bay

Mr. Zeke Grader, Pacific Coast Federation and Fisherman's Association

Ms. Sharon Green, Los Angeles County Sanitation Districts

Dr. Gerald Greene, Executive Advisory Committee, Los Angeles County MS4 Permittees

Mr. Chook Chook Hillman, Karuk Tribe

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

Mr. Alan Levine, Coast Action Group

Mr. Mark Miller

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

Ms. Cindy Paulson, Turlock Irrigation District

Ms. Deb Self, Baykeeper

Ms. Linda Sheehan, California Coast Keeper Alliance

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Michelle Smith, Humboldt Baykeeper

Ms. Jenny Staats, Klamath River citizen

Ms. Alexis Strauss, United States Environmental Protection Agency

Mr. Bill Thomas, Lake Elsinore Valley Municipal Water District

Mr. Craig Tucker, Karuk Tribe

Mr. Mati Waiya, National Water Keeper Alliance

Ms. Charlene Walden, Citizens of Siskiyou County Property Owners on Klamath River

Mr. Richard Watson, Richard Watson & Associates, Coalition for Practical Regulation

Ms. Susan Young, Coastal Advocates for Small Towns

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1 PROCEEDINGS

2 CHAIRPERSON DODUC: Good afternoon. We're back
3 in session.

4 At this point we're going to open the meeting up
5 for public forum comments on any matter that is not
6 pending before the Board. And I do have ten speakers
7 cards for this item. It says we've only allotted 30
8 minutes. I'm going to limit everyone to 3 minutes each
9 please.

10 And we'll begin with Ms. Charlene Walden from
11 Citizens of Siskiyou County.

12 And after Ms. Walden will be Mr. Craig Tucker.

13 MS. WALDEN: Good afternoon.

14 CHAIRPERSON DODUC: Welcome.

15 MS. WALDEN: Is this on?

16 Good afternoon. I'm Charlene Walden. I'm from
17 Iron Gate Lakes on the Klamath River, Siskiyou County.

18 We are here representing the citizens of Siskiyou
19 and residents of southern Oregon that have responded to an
20 opinion poll we have circulated over the past three months
21 to businesses, residents, and property owners of Iron Gate
22 Lake Estates, Copco Lake, and Klamath Basin; KRCE Ranch;
23 Klamath Ranch Resort; the PFUSA; Hornbrook and Greenhorn
24 Granges; and the SOSS.

25 We would like to take our side of water quality

1 issues of the Klamath River Basin, Iron Gate Lake and
2 Copco Lake Reservoirs. As citizens of Siskiyou County,
3 we've asked the County Health Department for information
4 on the algae problems. They have become a headline in our
5 area over the past few years. We have read all
6 information and news articles connected to the water
7 quality issues, namely, the blue-green algae problem that
8 is so very present in the summer months of July and August
9 in Siskiyou County, as well as every other water body of
10 the world.

11 There has never been a fish killed from the
12 algae, nor has there been an illness or a death recorded
13 from exposure to the blue-green algae in Siskiyou County
14 or the State of California.

15 We believe there are answers and solutions to all
16 the water quality issues and the survival of the salmon.
17 But there needs to be much more information gathered and
18 research done to come to a solution that can benefit all.
19 Removal of the algae before it blooms is a less drastic
20 solution than removal of the dams. The Bureau of
21 Reclamation is now working on this very issue.

22 Let us all use good and sound science in the
23 water quality issues before us. Save our dams, lakes,
24 salmon and our way of life in Siskiyou County.

25 Thank you.

1 CHAIRPERSON DODUC: Thank you very much, Ms.

2 Walden. Thank you for joining us today.

3 Mr. Tucker, followed by Ms. Jenny Staats.

4 MR. TUCKER: Good afternoon. My name is Craig
5 Tucker. I'm the Klamath Coordinator for the Karuk Tribe.

6 The Karuk Tribe is the second largest tribe in
7 the State of California, with over 3400 members. About
8 half of the ancestral territory of the Karuk Nation is in
9 Siskiyou County.

10 The toxic algae blooms have been aptly described
11 in different reports in the media; and in the film you'll
12 see next are a major health threat for both people living
13 around the reservoirs, but also for people who live
14 downstream.

15 The toxic blue-green algae microcystis aeruginosa
16 has made people sick around the planet. The blue-green
17 algae itself secretes a toxin -- protein toxin called
18 microcystin. It's a water soluble toxin. So even though
19 when you look at the reservoirs and they turn this shade
20 of antifreeze green in the summer, the toxin itself is
21 colorless. And so even though you may not see algae
22 blooms downstream in the moving water because this algae
23 likes stagnant warm water, nutrient-rich water, which is
24 exactly what it finds in these reservoirs, those of us who
25 live downstream also have the potential of getting

1 poisoned even though we can't see the algae because the
2 water soluble toxin is washing downstream of these dams.

3 We think the State of California needs to move
4 quickly to set a numerical water quality standard for the
5 toxin microcystin. The State of California, I understand,
6 has to do scientific review to come up with what that
7 standard is, because currently neither the State of
8 California nor the U.S. EPA has a standard. However,
9 since this problem is seen throughout the third world, the
10 World Health Organization has done the research and set a
11 standard. And we think until the state finishes its
12 analysis, that it should adopt the World Health
13 Organization standard until, you know, further science is
14 done. And I think it's the only thing appropriate to do.

15 We've known this probably -- we've measured --
16 the Karuk Tribe has measured this plume two years in a
17 row. And we didn't know until we went out there and
18 started doing an analysis that the blooms were this toxic
19 form of blue-green algae microcystis aeruginosa. And so
20 far all we've gotten in response are postings around the
21 reservoirs.

22 But we need to hold people accountable for
23 treating this problem. And as in the video you're about
24 to see, we cannot measure the toxic algae in the inflow of
25 Copco Reservoir. But in the reservoir some of our sample

1 sites exceeded World Health Organization guidelines by
2 4,000-fold. And we shouldn't have to wait till somebody
3 get sick before we do something to fix this problem.

4 We've got the science now and we know this is
5 pending. And some kid's going to go up there, they're
6 going to fall in one of these eddies, one of these
7 backwater eddies and they're going to get a mouthful of
8 this stuff. And then everybody is going to say, "You know
9 what, we should have done something before this happened."
10 And so that's what we're urging you to do.

11 Thanks.

12 CHAIRPERSON DODUC: Thank you.

13 Mr. Baggett.

14 BOARD MEMBER BAGGETT: Yeah. I think as Craig
15 knows, we have a working group on this. We've dedicated a
16 million dollars, which we're just now getting the
17 contracts to begin the studies. I don't know if Beth
18 wants to -- I know Beth has been coordinating that -- Beth
19 Jines, our Chief Deputy.

20 CHIEF DEPUTY DIRECTOR JINES: Yes, that's
21 correct. We have allocated -- the Board has allocated a
22 half a million dollars to do sampling statewide to
23 determine the extent of the blue-green algae. And it is
24 statewide. We've found it in a number of different
25 locations so far.

1 And then we also have -- the Board has also
2 allocated funding to the Office of Environmental Health
3 Hazard Assessment to do a human health and ecological
4 health risk assessment of what we find in the sampling.
5 We did some samplings this year. We will do more
6 through -- within the next year. And as the data is
7 gathered, we will supply that to them and they will do the
8 risk assessment.

9 BOARD MEMBER BAGGETT: You know, I think as Craig
10 stated, you know, you need the empirical basis. You
11 need -- you don't just set water quality standards in a
12 vacuum. And that's -- but we're moving as quickly as we
13 can get this done.

14 So I appreciate the concern.

15 CHIEF DEPUTY DIRECTOR JINES: We've also -- I
16 just bring it to your attention. We have also added
17 funding this year to complete the Klamath blue-green algae
18 group's sampling that they were doing, because they ran
19 short of funding because the blooms were quite extensive
20 this year. We were able to supply an additional funding
21 so that could be completed.

22 And then also we have put together a work group
23 made up of representatives from a number of different
24 health organizations. It started out the Office of
25 Drinking Water of Health Services and ourselves. And as

1 people became aware of the work group, it grew enormously,
2 and eventually we've had representatives from Centers for
3 Disease Control in the State of Oregon and all over
4 California. And that group has put together postings,
5 notices that can be used by county health officers
6 throughout the state.

7 And we also have on our website -- on the Water
8 Board's main page there's a link there for blue-green
9 algae. And it will take you to both our website and the
10 Department of Health Services website. And there's a
11 whole wealth of information. And we keep people posted on
12 where we are in the process of studying and analyzing the
13 risk that's posed by the blue-green algae.

14 MR. TUCKER: I would just offer that. I don't
15 want people to misinterpret what we're saying. We are
16 very appreciative of what the Water Board's done and the
17 State of California's done. I don't mean to stand up here
18 and say, "Hey, you're not doing anything about this
19 problem," because you guys are, and I do acknowledge that.
20 And I think what we're saying is we want to go one step
21 further. And until we -- I know the state's putting the
22 pieces together for itself. But there is a good
23 scientific foundation behind the standards set by World
24 Health Organization. And it seems to me that in the
25 interim until you're finished let's be careful and take

1 good precaution and go ahead and adopt a standard that
2 exists. And that's really the bottom line for why we came
3 here today.

4 BOARD MEMBER BAGGETT: Thank you. Thanks for
5 your help.

6 CHAIRPERSON DODUC: Thank you very much.

7 Ms. Jenny Staats, followed by Mr. Zeke Grader.

8 MS. STAATS: Hi. I'm Jenny Staats and I work
9 with the Klamath Salmon Media Collaborative. We do
10 independent local media out of the mid-Klamath river.

11 And what I'd like to present today is -- my
12 comment is part of a longer film giving some information
13 about the toxic algae in the Klamath River.

14 So thanks.

15 Oh, and just also about the media -- we
16 disseminated the voices from local media in trying to get
17 it into the, you know, more major media, because our local
18 stories are not getting through.

19 So thank you for watching this.

20 (Thereupon a video was played.)

21 CHAIRPERSON DODUC: Thank you very much.

22 Is there anything else?

23 MS. STAATS: No, thank you.

24 CHAIRPERSON DODUC: Thank you.

25 Mr. Grader, and then Mr. David Arwood.

1 MR. GRADER: Thank you, Madam Chairman, members
2 of the Board. My name is Zeke Grader. I'm the Executive
3 Director for the Pacific Coast Federation of Fishermen's
4 Associations.

5 Our concern here today with this issue is that
6 our members fish along the Pacific Coast for Pacific
7 Salmon, and the fact is is that we're managed on the basis
8 of the health of the Klamath River fish. And we certainly
9 know that this toxic algae is not only a concern for human
10 health, as you just saw on the end of this video, but we
11 also have a very specific concern about how it's affecting
12 fish life as well, certainly as far as everything from
13 dissolved oxygen.

14 But probably more important is that this algae is
15 also helping to create a host for the -- or, excuse me --
16 habitat for the host worm that -- and the worm that hosts
17 the parasite in the river that of course is largely
18 responsible particularly for the juvenile salmon die-offs
19 that we've seen, particularly since 2002.

20 So we think it's extremely important that this
21 board establish now, as has been requested by the speakers
22 before me, to establish numeric standards and get on top
23 of this issue as quickly as possible. I think it's
24 absolutely imperative that we deal with this algal
25 problem, this microcystin as quickly as possible, not

1 simply for the human health, which is very important, but
2 also for the sake of the economies up and down the
3 California and Oregon coast that depend on this salmon
4 resource.

5 Thank you.

6 CHAIRPERSON DODUC: Thank you.

7 Question from Hoppin.

8 Mr. Grader, please don't go away.

9 BOARD MEMBER HOPPIN: Mr. Grader, is your biggest
10 concern with the blue-green algae and the resultant
11 microcystin or is with the temperatures that allow this
12 algae to bloom?

13 MR. GRADER: I think it's a combination of both.
14 We have got to be concerned with the high water
15 temperatures. But then also the concern is is that -- for
16 example, we're finding the worms that act as the host to
17 the parasite, see Shasta, we're finding is those worms
18 can -- could to be found more where there's really fine
19 sediments. This would reflect from where you get this
20 algae, just breaking down the algae as it comes out of
21 Iron Gate Dam, we're finding it in the lower river.

22 So it's a combination of factors. I don't think
23 there's any one thing. It seems to be mostly two things
24 are converging together to create both the water
25 temperature problem and the problem with algal blooms.

1 You have nutrient rich water coming out of Klamath Lake
2 coming down the river, hits these reservoirs. They're
3 shallow. In the summer time it warms up. You'll get the
4 algal blooms and that begins creating new problems,
5 everything from warm water discharges to the microcystin,
6 that is, the toxic itself, as well as the fine sediments
7 that are created, that then create the habitat in the
8 river downstream of Iron Gate then for this worm that is
9 part of the lifecycle then of the parasite that's been
10 just so devastating to these juvenile salmon.

11 BOARD MEMBER HOPPIN: Thank you.

12 CHAIRPERSON DODUC: Thank you, Mr. Grader.

13 Mr. Arwood, followed by Regine Chichizole.

14 I will apologize now for mangling everyone's
15 name.

16 Mr. Arwood, welcome.

17 MR. ARWOOD: Thank you.

18 Hello. My name is David Arwood. I was born in
19 Happy Camp. I'm Karuk.

20 I didn't plan on talking when I came down here.
21 Excuse me. Actually I came down here to drum. But they
22 wanted me to talk. So I thought, what could I say that
23 could possibly make a difference this decision-making
24 process that you folks have got to go through concerning
25 the water quality on the Klamath River?

1 The Klamath Tribe, the Shasta Tribe, Karuk Tribe
2 Yurok Tribe, we're all river people. Everything that we
3 do revolves around that river. We count on that river for
4 our subsistence.

5 Our stories tell us that the creator gave us
6 these rivers and the resources so we could live here, and
7 that we'd always be able to do so. And as our blood
8 continues to proliferate into mainstream society, I wonder
9 if we're going to be able to live here. Maybe we should
10 just wait till someone dies from this algae bloom before
11 we stop and do something about it. I know you all think
12 you're doing something about it now. But you have to
13 really ask yourself, "Am I doing the right thing?" That's
14 what I ask myself all the time -- all the time.

15 I'm from a medicine family, and I have
16 obligations.

17 (Thereupon he spoke in an indian dialect.)

18 MR. ARWOOD: And I'll say it in English.

19 My name is Treewich. I come from T-bar. I'm a
20 medicine person. What's the world coming to? What is the
21 world coming to? Some people aren't real people. We are
22 real people. I know medicine. I carry medicine. I make
23 medicine for the real people in the world.

24 Thank you. God bless us all.

25 CHAIRPERSON DODUC: Thank you, sir.

1 I don't want to mangle your name a second time.

2 MS. CHICHIZOLE: Hello. My name is Regine
3 Chichizole and I'm the Klamath River Keeper. I brought a
4 picture today of what it looks like in the Iron Gate
5 Reservoir. It looked like this as of three weeks ago.
6 This is from last year, but I've confirmed with many
7 people this is currently what it was looking like.

8 As you can see, the reservoir --

9 CHAIRPERSON DODUC: Can we see?

10 BOARD MEMBER WOLFF: I cannot see.

11 MS. CHICHIZOLE: I'm sorry. Hard to hold it up.
12 I'm kind of short.

13 CHAIRPERSON DODUC: Thank you.

14 MS. CHICHIZOLE: I also brought a letter here
15 today from over 35 different organizations on the Klamath
16 River and throughout the country asking for microcystin to
17 be treated as a pollutant on the Klamath river and for
18 microcystin to be listed as a pollutant on the Klamath
19 River. On this letter Senator Chesbro and Assemblywoman
20 Patty Berg have also asked for this toxic algae issue to
21 be dealt with by this Board.

22 I believe that PacifiCorps should be listed as a
23 polluter. Their dams are creating this algae. And while
24 the nutrients and the temperatures are adding to it, it is
25 actually the impoundment at the reservoir that is creating

1 the algae, and it is being released from the reservoir.
2 In my knowledge, they should have to have a permit to
3 release this algae down river. People are afraid to use
4 the river. I get calls all the time from people that are
5 saying, "Hey, I can't go and I don't feel safe going in
6 the river." "I own a fishing industry. I don't know what
7 to do." "I own a boating industry. I don't know what to
8 do." Should I tell people that they shouldn't go in the
9 Klamath River?

10 This is a very serious situation. People on the
11 Yurok Reservation are afraid to go fishing. This is
12 something that needs to be dealt with, it needs to be
13 dealt with some time soon. And so I really encourage you
14 to do it in whichever way you have to, whether it's
15 getting a waste discharge permit, listing it as a
16 pollutant, setting numerical standards. Something does
17 have to be done about this.

18 That being said, I would like to thank the Board
19 for supporting the sediment listing. I heard there's a
20 very good chance that might happen. I would like to
21 encourage the Board also by their looking at that listing
22 to think about what it means to the Klamath dams. I
23 support the sediment listing myself, but I also support
24 the Klamath dams coming out. So if it comes time for the
25 permit to go through on the sediment in the Klamath dams,

1 please do do that.

2 Other than that, I would just like to say that we
3 really need to do something in the Klamath River right
4 now. It's not like exaggerating that people are afraid to
5 use the river at all. People are driving very, very far
6 to use tributaries at this point. Fish kills are a very
7 regular thing. People don't know whether or not the toxic
8 algae is present in fish. There's a lot of fear right now
9 going on. And I know there has to be more studies to
10 figure out whether or not -- what this means, what the
11 microcystin problem means. But in the short term we
12 should adhere to the WHO standards and we should do
13 something about that.

14 That being said, I of course want to thank you
15 for all your support throughout the time and thank the
16 State of California for their help right now in trying to
17 get the Klamath dams out, and we really need to do it.
18 It's the only way I can see that the microcystin is not
19 going to become a problem any more.

20 Thank you.

21 CHAIRPERSON DODUC: Thank you.

22 MS. CHICHIZOLE: Any time.

23 CHAIRPERSON DODUC: Chicizole.

24 MS. CHICHIZOLE: I'm going to come here a lot
25 too.

1 CHAIRPERSON DODUC: Please.

2 Welcome, Karuk Tribal Member Hillman, followed by
3 Yurok Tribal Member Colegrove.

4 MR. HILLMAN: Chook Chook Hillman from Orleans,
5 California.

6 I come here today as a medicine person also. And
7 all I can really say is that, you know, this is scary. I
8 don't know if you guys although understand what the river
9 means to us. I mean we go to our river to get our
10 groceries, you know. And our groceries are contaminated.
11 I don't know if you are familiar with that -- the spinach
12 the other day, it was a big deal. You know, I mean we go
13 to the store, groceries are contaminated. We go to our
14 church and you can get deathly ill. It's just ludicrous
15 to me that something like this could even happen.

16 I don't have much to say. Because I get pretty
17 upset when I talk about it. But this definitely has to be
18 dealt with. You know, it's hard to send our priest to go
19 down to the river to pray, you know what I mean, because
20 he's going to get sick. And, you know, this is our way of
21 life and we just keep going. And this is a big part of it
22 right here.

23 So I'd appreciate, you know, whatever has to
24 happen, it will happen. It will be well appreciated.

25 CHAIRPERSON DODUC: Thank you, sir.

1 MS. COLEGROVE: I'm Dana Colegrove, and I'm
2 pretty much going to say the same thing he says.

3 We're river people. We have real concerns of
4 what's going on in our river. It's like he said, it is
5 the grocery store for us. You guys had the whole United
6 States freaking out over spinach a couple months ago.
7 Whole California was freaking out over spinach. I don't
8 see nobody freaking out over the river.

9 What's going on? We're not people? We come from
10 a -- there's a lot of us, just like you guys. We need all
11 the help we can get to clean up our rivers. That's our
12 way of life.

13 Sorry. I'm choked up. It makes me upset too to
14 think about all the bad stuff that's going on.

15 We couldn't fish. We couldn't gut our fish in
16 the river. The kids couldn't swim in the river. You
17 couldn't let your animals out to even drink the water
18 because it made them sick, made kids have rashes,
19 everything. It's way out of control.

20 I came a long ways today, and I appreciate you
21 guys listening to me. I'm sorry for checking up.

22 Thank you. Appreciate all your help you can give
23 us.

24 CHAIRPERSON DODUC: Thank you, Ms. Colgrove, and
25 thank you for spending time with us today.

1 Mr. Richard Watson, followed by Mr. Mati Waiya.

2 MR. WATSON: Thank you, Chair Doduc and members
3 of the Board.

4 Earlier today we were talking a little bit
5 about --

6 CHAIRPERSON DODUC: Actually, Mr. Watson, my
7 apologies. I just looked at your note, and you're not
8 speaking on the Klamath.

9 MR. WATSON: That is correct.

10 CHAIRPERSON DODUC: So if I could please ask for
11 you to step back, and we'll invite you back after the
12 Klamath speakers.

13 MR. WAIYA: I want to thank you for this
14 opportunity. My name is Mati Waiya. I'm working with the
15 National Water Keeper Alliance. And we were really
16 influential in creating the Klamath River Keeper. And we
17 do enjoy suing the state and bringing in the federal
18 government to make sure they do their job. And we look
19 forward to doing that here with the Klamath.

20 Please take into consideration the issues at
21 hand. Go to the river, look at the purity in some areas
22 and the destruction in others. Look at the children
23 playing, just like you would yours, and see the pains that
24 they have to suffer because of memories of a ancestral
25 place is being depleted, destroyed and threatened.

1 You look at these dams, they're like arteries in
2 your heart. They're clogging up a system of life. You
3 look at the health of the people and a history of a
4 traditional way, a life way. Take for a moment and let
5 yourself into the sacredness of the relationship between
6 you and an environment.

7 I came here about three years ago when Mr.
8 Tamminen was appointed. I did a blessing on this
9 building. I got so many e-mails, hundreds, of people that
10 forgot why they were here; that it wasn't just a job
11 anymore, it was a responsibility. You're here to protect
12 the environment.

13 I want to give you, just for the record, an
14 ancestral song about the water, one verse.

15 "Please, listen to, like a mother giving their
16 child nourishment through their breasts, what the waters
17 do to the land."

18 (Thereupon a song was played.)

19 MR. WAIYA: As you look at the way we treat
20 regulations and process, as we think of our commitment and
21 our responsibility and respect to one another, let's don't
22 take lightly this issue. Let's enforce the Clean Water
23 Act law to the fullest. Let's do our job. The budgets
24 are low, manpower is low. Pay attention to those that are
25 working with you, and that's the citizens. Not special

1 interests, not necessarily recreation, but the health of
2 an ecosystem.

3 Thank you.

4 CHAIRPERSON DODUC: Thank you, sir.

5 Mr. Mark Miller, followed by Starla Goff.

6 MR. MILLER: Hello. I'm studying ecology at
7 Humboldt and I visited the Klamath frequently. I'm very
8 concerned about the health of the riparian ecosystem
9 because of the toxic algae. And I feel that a very simple
10 and effective way of removing this problem is to
11 decommission and remove the lower four dams on the Klamath
12 river, currently owned by PacifiCorps. For a number of
13 reasons this is very, very important for the Yurok, Hupa,
14 Karuk nations that live along the Klamath River and depend
15 upon the healthy returning migratory salmon populations,
16 and the risks of the Salmon becoming threatened,
17 endangered or extinct because of the continual year after
18 year obstruction of the Klamath River from these four
19 lower dams, that are very outdated and don't even supply a
20 great deal of energy to the power grid.

21 The salmon are affected directly by these toxic
22 algae and all the other microbes, like the C-Shasta that
23 caused the fish kill in 2002 where over 50,000 fish died
24 from the water quality being affected. The dams are
25 directly responsible for several factors. It's the algae

1 blooms because of the higher temperature, the lower water
2 velocity and the trapping of nitrates from the runoff that
3 are coming from the Klamath Basin, the fertilizers and
4 whatnot that enter. So you have these factors.

5 And by removing these dams, this would not be a
6 problem anymore. The water would flow through, the
7 temperature would go to its normal cooler temperature,
8 which the salmon are able to tolerate, which gets them to
9 be able to swim out to the ocean when they're juveniles so
10 they don't get trapped there and they end up having these
11 fish kills.

12 And it's very important for the three nations
13 that I mentioned to have these salmon populations
14 returning and to actually have an increase. And I think
15 what we could see for the benefit of removing these dams
16 is that everyone along the coast who depends upon fishing,
17 whether they be professional fishermen or whether it's for
18 the tribal nations that live there, there would be an
19 increase in salmon populations because the salmon could
20 then have better restored habitat, there'd be less
21 putrifaction, less toxic algae, or none at all if even --
22 because they would not be trapped behind these
23 impoundments. These dams are basically obstructions.
24 They're obstructing the water flow, and that's why this
25 toxic algae is magnified to the point where it's becoming

1 a crisis. And I believe that it is a crisis.

2 In order to save the salmon and to prevent the
3 salmon from becoming endangered, threatened and extinct,
4 we need to really focus on decommissioning these dams and
5 recommending that the Federal Energy Regulatory Commission
6 decommission the PacificCorps' lower four Klamath dams in
7 this year of 2006 and that they be removed and the river
8 be restored. And then we will see in 5, 10, 15 years an
9 increase in salmon population, which will be good for the
10 economy of the coastal region and for the spiritual and
11 cultural health of the Yurok, Hupa, and Karuk peoples who
12 depend upon this.

13 Anything else to me, in my opinion, and other
14 people's too, is a form of cultural genocide that by
15 keeping these obstruction dams -- the dams obstructing the
16 Klamath River, this is contributing to a genocide because
17 it is not allowing the spiritual activities and the
18 cultural activities that revolve around the salmon and the
19 returning of the salmon, the world renewal ceremony to
20 continue because of the threat of the toxic algae to the
21 fish, number one, that is a food source, a nutrition
22 source and a spiritual source, and also just being there
23 and being in the physical presence of that river is
24 important. And you cannot get that close to the water
25 without having some kind of a contact with either the

1 aerosol particulates from the algae or just the
2 unpleasant -- the general unpleasantness of it. And it is
3 dangerous and it is toxic.

4 So these dams really need to be removed, and we
5 need to recognize -- I really hope that you could
6 recommend to FERC that the Klamath dams are decommissioned
7 and removed.

8 Thank you very much.

9 CHAIRPERSON DODUC: Thank you. Thank you, Mr.
10 Miller.

11 Please.

12 MS. GOFF: Yes. My name is Starla Goff. I am an
13 attorney for the New Algae Company in Klamath Falls,
14 Oregon. We're your neighbor to the north.

15 Klamath Falls, as you know, sits right next to
16 Klamath Lake, which is full of blue-green algae. The New
17 Algae Company has been involved in actually the
18 nutritional supplements of blue-green algae for decades.

19 Klamath, lake as you know, even though it is
20 replete with blue-green algae, it is a naturally forming
21 occurrence. It is an occurrence that occurred, you know,
22 thousands of years ago due to the nature of the ancient
23 seabed, and is actually one of the sources for your
24 Klamath River.

25 It is something that we've been dealing with in

1 the State of Oregon, my favorite place to be, for decades.
2 And it's something that we have a dialogue on, a
3 discussion on, on what to do with the different species.
4 And so I think one of the things that we're here -- I'm
5 here today to kind of tell you about is the beneficial
6 uses of blue-green algae; and also asking you to be
7 specific, and when you refer to blue-algae, which species
8 you're talking about. There are some that are toxic and
9 there are some that are not. There are some with toxins
10 that are greater than others.

11 But with regards to this industry, the industry
12 of blue-green algae is actually a national industry of
13 health for the country. And not only human supplements,
14 but also what we're finding is a great source of nutrients
15 for animals. It's doing a phenomenal job right now with
16 shrimp in Belize.

17 It is consumed in, oddly enough, Japan quite
18 plentifully. They eat it like jerky. They sprinkle it on
19 their food. And -- I know you want some, don't you? You
20 want to sprinkle some algae on your food.

21 And it is considered actually in Europe and all
22 over the world as a great source, as a foundation.

23 What we are looking at at least in the State of
24 Oregon and in the County of Klamath is, in looking at
25 pollutants, looking at things that may cause the ecosystem

1 to go out of balance, whether it be through cattle,
2 whether it be through runoff, to make sure that we're not
3 adding to the problem.

4 But nature has created blue-green algae, and it's
5 created blue-green algae for a reason. Sometimes we
6 haven't a clue why. But on some of the species it seems
7 that it has an extremely -- well, exceptional beneficial
8 health to humans and animals alike.

9 Just so you know how big the industry is: There
10 are 200 people full-time in our company in Klamath Falls,
11 Oregon. There's 2,000 people in the blue-green algae
12 business in Klamath Falls -- or in Klamath County.
13 There's approximately 20,000 people nationwide that are in
14 the industry of blue-green algae.

15 And the company would also like to avail itself,
16 because we've been in this for a while, for the beneficial
17 uses or just the research that we've done or been in
18 conjunction with, whether or not it's the State of Oregon
19 or the county, on the things that we've looked at. And
20 we're more than happy to avail ourselves and let you see
21 our research on the area.

22 CHAIRPERSON DODUC: Thank you very much.

23 And that completes our speaker cards on Klamath
24 river.

25 Let me take a moment and thank you all for being

1 here today, for traveling the distance and sharing your
2 experience with all of us. I think we all appreciate the
3 magnitude of the concerns that you've expressed. And
4 please know that this Board, this administration, this
5 Governor is very much committed to addressing problems in
6 the Klamath Basin. And to that extent we've actually
7 designated Board Member Baggett to be our leader on this
8 issue. And I know that he's been very much involved in
9 all of the discussions, all the efforts revolving around
10 Klamath, blue-green algae and all -- dams and other issues
11 involved there.

12 So let me now ask Mr. Baggett to please share
13 some of the thoughts and the efforts that you've been
14 involved in in this matter.

15 BOARD MEMBER BAGGETT: I think I'd just like to
16 give you a couple comments. I was just talking to
17 Secretary Mike Chrisman, who's the lead along with myself
18 and Director of Fish and Game, Ryan Broddrick. But they
19 totally -- spent over two years on negotiations with 28
20 parties. And I think some are aware on the Klamath
21 issues.

22 The Governor is very committed to, not just the
23 FERC process, but also to dealing with restoration of the
24 Klamath River. I think some of you may be aware, last
25 week he and Governor Kulongoski of Oregon sent a formal

1 letter out requesting a summit of parties from both
2 states, federal government, tribal governments, the
3 environmental community, you know, the agricultural
4 community, the counties along the river, to spend three
5 days trying to come up with a resolution, of not just the
6 FERC issues, but I think the river as a whole.

7 So the Governor is extremely committed along with
8 his colleague, you know, the Governor to the north,
9 Oregon. And rest assured, we're spending a lot of time.

10 Today there's a -- it's where I should be
11 actually right now -- there's a session going on in
12 Redding, and we'll be spending days next week and the week
13 after working with our federal counterparts, trying to
14 come up with some solutions in a short timeframe. The
15 summit is scheduled for the middle of December. So we're
16 working hard and fast.

17 CHAIRPERSON DODUC: Thank you.

18 Any other comments from Board members?

19 Once again, I really appreciate the time, the
20 commitment that you've all made to helping us address
21 these issues on the Klamath River. And you have this
22 Board's commitment, this Governor's commitment that we
23 take these concerns very seriously. And we will be doing
24 our best, working in concert through Mr. Baggett's effort
25 with other state agencies, with tribes, with other

1 organizations that have offered their assistance to us, in
2 order to bring this to an expedited resolution as soon as
3 possible.

4 Thank you very much.

5 With that, Mr. Watson, I welcome you back, to be
6 followed by Ms. Linda Sheehan.

7 MR. WATSON: Thank you, Chair Doduc. What I'd
8 like to do is on my -- my name is Richard Watson. I'm
9 speaking for myself at the moment. I want to address two
10 quick issues. One is statewide policy and the other is
11 atmospheric deposition.

12 Earlier today there was considerable discussion
13 about development of a statewide policy to bring about
14 consistency in the application of time schedules.

15 It reminds me that we've had for some time
16 discussions going on about a statewide storm water policy.
17 In fact, I think we're probably approaching two years
18 since we had workshops and hearings in northern and
19 southern California.

20 This is an area that we really do need to
21 address -- and I hope it doesn't get behind other
22 policies -- that we need to bring that back to the
23 forefront to develop statewide policy on storm water
24 quality. And you are the policy-making body, and we hope
25 that you will proceed with that.

1 Secondly, I wanted to mention atmospheric
2 deposition. We were really pleased -- or I was personally
3 really pleased when you had the workshop back in February
4 with the Air Board. And I note that the Chair of the Air
5 Board has an air pollution seminar series. And tomorrow
6 there is a program on atmospheric perspective on toxic
7 metal deposition to water bodies and watersheds. That is
8 very encouraging. I'm going to not be here, but I will
9 tune into it. I just want to encourage you to work even
10 more diligently trying to get the Air Board to work with
11 you to address the relationship between atmospheric
12 deposition and water quality.

13 Thank you.

14 CHAIRPERSON DODUC: Thank you, Mr. Watson. I do
15 know that on the issue of atmospheric deposition, that
16 there has been discussions between Air Board and the Water
17 Board on proceeding on this issue.

18 And if Mr. Howard or Ms. Jines could please
19 provide an update on your efforts.

20 CHIEF DEPUTY DIRECTOR JINES: What we have
21 discussed with the Air Board and agreed on is to do two
22 pilot projects that look at the issue. One is we would be
23 working with our Los Angeles Regional Board. And it is
24 dealing with the ports -- atmospheric deposition of the
25 ports of Los Angeles. And we'll tie into their TMDL

1 process for the ports. We're going to have the first
2 meeting on that with our folks, with the regional board
3 folks I believe it's next week or the week after.

4 And then the second pilot project we'll be
5 looking at mercury in the San Francisco Bay Area and
6 atmospheric deposition from that, and try to tie it into
7 some of the research that's being done by the Brake Pad
8 Coalition, I think that's -- or some name something
9 similar to that -- in the San Francisco Bay Area.

10 And we hope to within a year be at a point where
11 we'll have some specific proposals possibly for programs
12 for funding or something along those lines.

13 CHAIRPERSON DODUC: Okay. Thank you. Please
14 keep us up to date on that.

15 Dr. Wolff.

16 BOARD MEMBER WOLFF: Could you say a few more
17 words about what is the -- what will these pilot projects
18 encompass? That is, what are the activities that are
19 going to take place over the course of this year?

20 CHIEF DEPUTY DIRECTOR JINES: It will be data
21 gathering and trying -- what we're trying to do is through
22 these two pilots is to work out a process for how the Air
23 Board and the Water Board -- I mean we don't really know
24 exactly how to carry out the project. We're going to be
25 working that out through these two projects.

1 BOARD MEMBER WOLFF: But there will be infield
2 monitoring and assessment analysis, et cetera? Or is it
3 more of a paper project?

4 CHIEF DEPUTY DIRECTOR JINES: I think it will be
5 a combination. We'll be using the data that's already
6 being gathered in both the TMDL and the brake pad efforts.

7 BOARD MEMBER WOLFF: Okay.

8 CHAIRPERSON DODUC: Thank you, Ms. Jines.

9 Ms. Sheehan.

10 MS. SHEEHAN: Thank you. Good afternoon. Linda
11 Sheehan, Executive Director of California Coast Keeper
12 Alliance. I had a quick comment on CIWQS.

13 But I wanted to reiterate and support the
14 comments about the Klamath and the toxic algae. I had the
15 opportunity to visit there this summer. And it's not just
16 a water body. It's food, it's home, it's church. And the
17 toxic algae problem, it's just pervasive. It's what
18 everybody talks about. It's kind of hard to appreciate
19 from here how significant it is. So I wanted to make sure
20 that I reiterated that point.

21 So thank you for the opportunity to raise another
22 issue with respect CIWQS. I testified here about a month
23 ago with regard to the need for more public accountability
24 on enforcement and monitoring. And CIWQS is the database
25 that ostensibly is supposed to move that forward.

1 At the most recent Board meeting -- I wasn't
2 here -- but I believe the Board approved a number of
3 millions of dollars for bond funds to be spent on various
4 grant implementation and monitoring programs. And Dr.
5 Wolff I believe, I was told, asked a question about the
6 types of analysis that will be done with the data and how
7 the data would be entered and where would it be entered.
8 And I'm told that staff responded that there's nothing in
9 place to do this.

10 Californians have allocated literally billions of
11 dollars in bond funds to 13, 40, 50 and also Prop 204 for
12 ecosystem restoration. With respect to 13, 40 and 50,
13 they were supposed to enter this data consistent with the
14 SWMP format. And I know that this would have sort of
15 helped that language along. And I am very eager to sort
16 of see that information, especially being, not only a
17 water quality expert, but a taxpayer. And I'd like to
18 know that the bond funds are spent appropriately.

19 And, you know, it's my understanding that about a
20 million and a half dollars has been spent so far to
21 complete the ambient water quality monitor level for
22 CIWQS. And I'm hopeful that the data will be entered in
23 there. And I'm just wondering with respect to the Board's
24 question for today is, where is the idea of a CIWQS audit?
25 You know, has that been followed through? Is there a time

1 for that? And also, is there a way to definitively say
2 when, where and how the bond funded monitoring data that
3 is supposed to be SWMP consistent is going to be put into
4 a database so that we can see it? I'm very worried that
5 the bond money might be spent, and then we wouldn't have
6 anything really to learn from.

7 So I'd be very appreciative to sort of know more
8 specifics about that.

9 Thank you.

10 CHAIRPERSON DODUC: Thank you, Ms. Sheehan.

11 Mr. Howard, please respond.

12 CHIEF DEPUTY DIRECTOR HOWARD: Yeah. Two weeks
13 ago Board members asked about what the plans were to get
14 the data into the ambient monitoring module. And I
15 indicated that I'd be bringing forward a proposal to that
16 effect. I have been meeting with staff and talking about
17 the various alternatives, which I'll, you know, bring to
18 the Board some time in the next couple of weeks.

19 With respect to the question of the audit, we
20 have got the approval of Steve Weisberg of SCCWRP to head
21 up a audit similar to the one that was undertaken by --
22 for SWMP to get together a series of experts, and he would
23 facilitate that. We would provide him with funds and he
24 would find the independent folks who would be doing the
25 evaluation. And he would be reporting back to us.

1 With respect to timing. You know, we have to get
2 together a contractual relationship. But at least a
3 framework is established for that and we're moving forward
4 on putting that together.

5 Does that answer --

6 CHAIRPERSON DODUC: Again, what's the time
7 estimate on that?

8 CHIEF DEPUTY DIRECTOR HOWARD: Well, we assume
9 that it will take us a couple of months to get the
10 contractual stuff together, and that we assume about six
11 months. And so I have been thinking of having it
12 completed around the end of this fiscal year.

13 CHAIRPERSON DODUC: That's way too long.

14 CHIEF DEPUTY DIRECTOR HOWARD: Well, I don't
15 know -- I mean if we're going to ask a series of experts
16 to review the work that's been done, I don't know that you
17 can -- you know, if they can drop everything. But, you
18 know, if there's a timeframe the Board prefers, I'll
19 certainly try to pass that along.

20 CHAIRPERSON DODUC: My understanding also is that
21 you and Mr. Polhemus, which I don't know if he's still
22 here, is working to address the gaps that currently exist
23 right now and perhaps developing some interim measures to
24 provide the tools necessary to provide reports and other
25 measures that various stakeholders, as well as U.S. EPA,

1 is interested in. How is that effort going in the
2 meantime?

3 CHIEF DEPUTY DIRECTOR HOWARD: Well, we had said
4 that we'd come back by December 13th with a series of
5 reports that are being developed. The first set of
6 reports is supposed to be deployed on Friday, and it will
7 list all the violations in the database, plus the storm
8 water ambient monitoring -- annual monitoring module. We
9 also the next week are intending to deploy a series of
10 reports on enforcement actions. And we have a whole
11 slough of them backed up that we'll be reporting to you on
12 December 13th which ones are presently employed on the
13 Internet.

14 CHAIRPERSON DODUC: Okay.

15 CHIEF DEPUTY DIRECTOR HOWARD: The other thing of
16 course that -- you know, the problem that we have with
17 respect to getting the SWMP data in, as I mentioned to you
18 before -- it doesn't have anything to do with CIWQS, if
19 that's the concern that's being expressed. The problem we
20 have is that the data has to be QAQC'd and it has to pass
21 through what we call our nodes, where it's uploaded into
22 CIWQS. And the problem there is that we have two nodes
23 operating and they're fully engaged right now putting the
24 SWMP data in.

25 We're in the process of developing two additional

1 nodes around the state. You know, we have to find the
2 staff, the contracts -- you know, arrange the contracts
3 and that sort of thing. Even then, we've got backed up a
4 huge amount of data to get uploaded into SWMP. And so
5 it's quite possible, especially considering the additional
6 bond funds that may be forthcoming, that we need to put
7 together another two or four nodes in order to have, you
8 know, enough places where the data can be adequately
9 QAQC'd, ensure that it's SWMP compatible, and then
10 unloaded it into the data system.

11 The problem, as I'm trying to relay, is not with
12 the data system; it's with the choke points of getting the
13 data passed the QAQC process.

14 CHAIRPERSON DODUC: Dr. Wolff.

15 BOARD MEMBER WOLFF: I'm just going to comment
16 that I had a two and a half hour demonstration of CIWQS
17 two, three weeks ago maybe, since we discussed it at this
18 Board meeting. Maybe it was a month ago and then maybe
19 three weeks since the demo.

20 In any case, in the conversations surrounding
21 that, it became clear that the system is capable of doing
22 a lot more than sort of the minimum that is required in
23 order to have information input to it that is, you know,
24 consistent, usable, useful to various audiences. The
25 system is very flexible. It can do a lot more than sort

1 of a minimum that might be required.

2 So one of the questions that I asked the staff to
3 look into was: What are the minimum data entry
4 requirements to have adequate information for someone to
5 not be misled by a report generated by the system? And
6 they're looking into that. And what are the time
7 requirements to input that minimum information? Because
8 those are the time requirements that are ultimately going
9 to bear on the staff and the regions who have to make
10 those inputs.

11 So that's part of what the staff was looking
12 into. It would feed into this audit, I think. The
13 auditors would then confirm that the time estimates to
14 make these minimum requirements, you know, are what the
15 staff say, et cetera. So that's part of it.

16 And the other part of it is: What reports do we
17 actually need? There have been requests for a lot of
18 custom reports. And, frankly, I think that the -- that
19 rather than generating a lot custom reports, which takes
20 up a lot of time, we might be better off to have a custom
21 report service where someone can say, "Here's the kind of
22 report I want," and then they would be instructed as to
23 exactly how to query the system to get that report. So
24 you wouldn't actually have a custom report where you punch
25 a button to get that report. You'd have a very short

1 instruction set that says, if you want this report, here's
2 how you get it out of the system. That might actually
3 take less time and effort for everyone involved. So that
4 was another suggestion that was made to the staff, and
5 it's presumably trailing along here in the discussions
6 about audits and the discussion about getting all this
7 SWAMP-compatible data uploaded in the system through
8 nodes.

9 So I wanted to call those two points out, because
10 I think those may cut through a lot of the tension around
11 the CIWQS system. It's a masterful system. You can do
12 lots of things with it. We don't at the beginning need to
13 do all those things. We need to get very clear on what we
14 need done now, make that functional as soon as possible,
15 and so forth.

16 CHAIRPERSON DODUC: Ms. Sheehan, do you have
17 anything else?

18 MS. SHEEHAN: Thank you very much.

19 I think that that's an important point, is that
20 there's certain basic information that the public can get
21 out of that. And that will help keep some of the costs of
22 CIWQS down, hopefully, so we can make sure that monitoring
23 money is spent as appropriate on the ground and getting
24 some good information until later put into the basic
25 system.

1 So I think those are excellent comments. Thank
2 you.

3 BOARD MEMBER WOLFF: I'm glad you agree. I just
4 wanted to clarify. I was told by the staff that you were
5 actually one of the people who was asking for all these
6 custom reports. And I --

7 MS. SHEEHAN: No, I basically want to know --

8 BOARD MEMBER WOLFF: -- but we don't need all
9 those all those reports. So --

10 MS. SHEEHAN: Some reports would be good.

11 Basic enforcement and violation information
12 consistent with SB 729, I would be thrilled to have that.

13 BOARD MEMBER WOLFF: No, that's coming along,
14 definitely.

15 MS. SHEEHAN: That would be great.

16 BOARD MEMBER WOLFF: Okay.

17 MS. SHEEHAN: Thanks.

18 CHAIRPERSON DODUC: All right. Thank you very
19 much.

20 And that completes our half hour of public forum
21 for this afternoon.

22 (Laughter.)

23 CHAIRPERSON DODUC: We will now move on to Item
24 No. 10.

25 Mr. Wilson.

1 Mr. Baggett has suggested that that be on consent
2 calendar.

3 (Laughter.)

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Thank
5 you, Mr. Baggett.

6 CHAIRPERSON DODUC: Given that I have 20 comment
7 cards plus, I don't know about that.

8 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Good
9 afternoon, Chair Doduc, members of the Board.

10 The next item under Agenda Item 10 is
11 Consideration of the 2006 Section 303(d) list.

12 My name is Craig J. Wilson. I'm Chief of the
13 Water Quality Assessment Unit in the Division of Water
14 Quality.

15 In my presentation I'd like to give you a very
16 brief overview of the requirements of Section 303(d), a
17 summary of the steps we've taken to develop the revised
18 list, a very brief summary of the comments received and my
19 responses, and then finally some new changes for you to
20 consider.

21 The State of California is required by the Clean
22 Water Act in federal regulations to prepare a list of
23 waters and set priorities for so-called water quality
24 limited segments that still require total maximum daily
25 loads, or TMDLs. The section 303(d) list was last revised

1 in 2003.

2 A water quality limited segment is any segment of
3 a water body where it's known that water quality does not
4 meet water quality standards or is not expected to meet
5 applicable water quality standards even after application
6 of technology-based effluent limitations.

7 The 2006 list -- listing process began in 2004
8 with the review and analysis of data and information. In
9 September of '05 staff released draft proposals for
10 changes in the list for public view. We held two
11 workshops and received over 200 submittals.

12 The comment period ended on January 31st of this
13 year. After responding to the comments and revising the
14 list in staff documents, the final draft of the proposed
15 list was released on September 20th, 2006. Based on the
16 original comments received, just over 700 fact sheets were
17 either revised or new.

18 To establish priorities we worked with the
19 regional water boards to develop schedules for TMDL
20 completion for listed waters that still require TMDLs.

21 The comment period on the latest set of
22 recommendations closed last Friday. We received 77
23 letters. And in the next few minutes I would like to give
24 you my responses to the specific changes we will make in
25 response to these comments.

1 The comment letters that we received fall into
2 four general categories:

3 The first group are those comments that are
4 focused on our incorrect application of the listing
5 policy. And I think some changes are in order based on
6 those comments.

7 We made mistakes in interpretation for the
8 Klamath River sediment. I think we took it off -- we
9 recommended that it not be listed because there was a
10 jurisdictional issue with the federal government. There
11 was some concern that the listing would be on
12 federal -- or tribal lands, not state lands.

13 The data is unequivocal. It needs to be listed
14 on some list. And what I would like to do is put it on
15 California's 303(d) list. And if it needs to be taken off
16 by U.S. EPA, they should make that change when it's their
17 turn to review this list.

18 The second major change is in the L.A. River
19 Reach 1 for aluminum. I'd like to remove that water from
20 the list. It was inadvertently left on there. It's an
21 old listing. We removed several of our recommendations
22 for -- in Region 4 they have a beneficial use that's a
23 conditional use, that should not be regulated. And we
24 just simply made a mistake leaving it on.

25 The third major change is on the All-American

1 Canal. When we first developed our recommendations, we
2 based the changes on the recommendation interpreting the
3 maximum contaminant levels. That was an incorrect
4 interpretation. We should have used the upstream water
5 quality objective in the Colorado river for salinity. And
6 when we use that value, there is no listing for the
7 All-American Canal.

8 A second group of changes were the data and
9 information were evaluated and we just came to the wrong
10 conclusion. There's two parts to the 303(d) list. One
11 part is those waters still needing TMDLs and waters that
12 already have TMDLs but the standards are not met yet. And
13 we made some mistakes in incorrectly placing waters in
14 those categories, and I want to straighten that out.

15 We also made a mistake in our interpretation
16 just -- our finding for Anaheim Bay for copper. That
17 needs to be removed from the list. The data supports not
18 listing -- not maintaining the listing.

19 And then, lastly, on Buena Creek we made some
20 mistakes for some of the sulfate listings. And there's a
21 few others there that I'll talk about when I speak about
22 the specific listings.

23 Now, a third class where we need to make some
24 changes are some of the commenters pointed out that there
25 are listings where no data and information is available,

1 yet there are listings for pollutants. This was pointed
2 out by U.S. EPA and the Los Angeles Regional Board for the
3 loin portion of Dominguez Channel. There's absolutely no
4 data or information available for aldrin, Chem A,
5 chlordane, DDT, Dieldrin, PCBs, chromium, or PAHs in that
6 water body. And I feel since there's nothing to support
7 that listing, it was simply a mistake. It needs to be
8 removed. And for Dominguez Channel estuary, for aldrin
9 and Chem A, same kind of problem, it needs to be removed.

10 The second major category of comments are minor
11 changes to the list that are outside the scope of the
12 listing policy. And I recommend that these changes be
13 made. They're related to minor area changes, like the
14 Coachella storm water drain or the change in the Laguna
15 Canyon Channel. There's several requests from regional
16 boards to change the potential pollutant sources, like in
17 north fork of the American -- or Feather River for
18 temperature. We need to identify the source. And I'll
19 talk about the specifics in a second. Lake Pillsbury, we
20 need additional source information.

21 We also need to change some of the pollutant
22 names. For example, for some pesticides we identified the
23 product name. And we should just identify the chemical
24 name, to be fair about it.

25 And then many commenters spoke about our

1 responses to comments: We were unresponsive.

2 We need to go back and fix a lot of those. And
3 I'm just simply going to do that as part of our effort.
4 It doesn't need to be acted on by the Board, but I wanted
5 to let you know. And we had to be -- we need to be clear
6 on some of our fact sheets. And we're going to fix those,
7 although it does not change the recommendations that we
8 have.

9 Third major category. We did not develop fact
10 sheets for some data and information where status of the
11 listing needs to be changed. This whole process, we
12 developed a staff report that's almost 5,000 pages in
13 volume. And there's still information out there that
14 we're trying to get to. But we needed to get before the
15 Board so we could finish this process.

16 Commenters brought up several issues that I'd
17 like to address now.

18 For Humboldt Bay, we need to list for dioxin. I
19 found the information. I'd evaluated it. There's
20 bio-accumulation of 2,3,7,8 TCD equivalents in crab
21 tissue, muscle tissue, oysters. It's sufficient under the
22 provisions of the listing policy to place it on the list.

23 There's also information for South San Francisco
24 Bay for nickel for removing it from the list. There's a
25 site-specific objective there, and it's appropriate to

1 take it off.

2 Coyote Creek nitrate for in Region 4. This was
3 an oversight by me. We have the data. We just didn't
4 evaluate it during our first process. It was kindly
5 pointed out by one of the commenters. And now we're going
6 to address it completely.

7 There were many comments on other aspects of our
8 proposal that we -- in our implementation of the listing
9 policy. And I'd like to go over those very briefly and
10 respond to them.

11 Many of the new comment letters we got last
12 Friday submitted new data. For example, there was a new
13 report on Walnut Creek in Region 4 for toxicity. The
14 draft report was just completed October 5th. Frankly, I
15 haven't had a chance to review that information and come
16 to a conclusion on whether we should list or delist. And
17 we didn't open this whole process up to new data anyway,
18 because we needed to finish this process.

19 And so if -- I will absolutely pour that into the
20 next listing process, which I anticipate beginning within
21 the next few weeks. We've drafted a letter to solicit new
22 information for 2008, and we're going to start this all
23 over again.

24 So there's new information that's out there. We
25 didn't review it in this last five days.

1 Many commenters talked about how water quality
2 objectives are wrong, the basin plans for beneficial uses
3 are incorrect, that they disagree with us protecting an
4 existing beneficial use like fish consumption.

5 On the first two, we're not writing basin plans.
6 We're just interpreting them. We're not changing any
7 standards whatsoever. We're just using them as they
8 exist. The trade or review process deals with that.

9 On existing beneficial uses, if the basin plan
10 does not contain a beneficial use that exists in our water
11 bodies, I think we're compelled to protect that use in the
12 water body. And so we listed it if we thought there was fish
13 consumption in certain water bodies.

14 One very difficult issue that we have addressed
15 or discussed is when natural conditions are out of
16 balance. We just had a lot of excellent presentations
17 about blue-green algae.

18 Blue-green when it's out of balance in the
19 environment is a real problem. It causes potential human
20 health problems, definitely problems with animals. And if
21 you want to control those algae blooms if they're not
22 desirable, the way to do that, this naturally growing
23 plant or bacteria, is to control the things that control
24 its growth.

25 Nutrients control its growth. Depth of water,

1 quiet water, the speed at which water moves controls it.
2 The North Coast Regional Water Board is developing a TMDL
3 for these factors. It's listed for nutrients, for
4 temperature, for dissolved oxygen problems. All those
5 things, once they're addressed, will address this toxic
6 algae bloom, which is a real problem.

7 We've also had -- a lot of commenters talked
8 about inconsistencies in what we did. For algae listings
9 in Region 4 we only removed the algae listings if a TMDL
10 had been completed, for the regional board had made a very
11 good effort at identifying the pollutants. We left the
12 other algae listings on the list to give the regional
13 board the option of evaluating all that information when
14 they got to those TMDLs. We did not want to remove them
15 in a blanket fashion because there might be a problem in
16 those water bodies with respect to nutrients. And we
17 wanted to make sure that they had that option to address
18 those problems.

19 Many people came up with counter-arguments to
20 explain why standards are not met: You know, the fish
21 don't bio-accumulate the pollutants in the water body, the
22 chemicals are banned, there's natural causes, fish are not
23 eating -- all of these things. If the fish were caught in
24 the water body, we assumed that it was impacting the uses
25 in that water body. We couldn't assume otherwise.

1 Sometimes we used forage fish as an indicator of
2 impacts on water quality where we didn't have fish that
3 were commonly consumed. But we felt that was a
4 conservative -- environmentally conservative approach for
5 listing.

6 Many people came up with counter-assessments and
7 reached different answers than we did. There's some very
8 creative people out there and they're reading these
9 policies very carefully.

10 EPA is planning -- or has mentioned that they
11 would like to reverse several of the close calls that we
12 made using our statistical approach. They're just using a
13 different statistical approach, and it's just not
14 expressed what it is. Ours is.

15 For the Santa Clara River Reach 2 for --

16 BOARD MEMBER WOLFF: I'm sorry, Mr. Wilson.
17 Could you clarify that?

18 We use one statistical approach and you're saying
19 EPA uses another -- there's isn't clear and ours is, is
20 that what --

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, our
22 statistical approach is very clear. We used a balanced
23 error, kind of binomial model. And it's laid out, it's
24 very clear what it is. It's been vetted.

25 They looked at our data and said, "Well, there's

1 over 10 percent exceedance. That does not meet standards.
2 Therefore, we'll put it on the list."

3 That protects for type 2 errors more than our
4 process did. In other words, it says there might be a
5 problem there. They're more conservative.

6 If you use statistics --

7 BOARD MEMBER WOLFF: They're more conservative.

8 And how many additional listings would that lead to?

9 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I don't
10 know, a handful, three, five maybe, something like that.
11 It's not a large number.

12 BOARD MEMBER WOLFF: Okay.

13 SENIOR ENVIRONMENTAL SCIENTIST WILSON: But there
14 are a few.

15 Santa Clara River --

16 CHAIRPERSON DODUC: Mr. Wilson, I think what I
17 will do is interrupt you because I know you have a long
18 list of comments that you want to run through and discuss
19 and provide the staff responses to them.

20 I know that we also have over 20 speakers cards.
21 And what I'd like do is, if my colleagues concur, is get
22 to the speakers and then ask you or Board members will ask
23 you to respond to any remaining issues that come up as
24 each speaker brings them up.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON:

1 Certainly. I provided a recommended changes to the list.
2 And if you wish, I could go over each of those at the
3 appropriate time.

4 CHAIRPERSON DODUC: We then --

5 BOARD MEMBER HOPPIN: Madam Chair, can I make one
6 comment?

7 CHAIRPERSON DODUC: Please. Mr. Hoppin.

8 BOARD MEMBER HOPPIN: Mr. Wilson, not that you're
9 at the podium to be reprimanded, but I think it's an
10 opportune time to make a comment. And it's not to you.
11 It's to staff and it's to all of those in the audience and
12 it's to all of these people that sent in these 77 response
13 letters. As a Board member, I understand why we have
14 deadlines. And I hope we can lengthen the period of time
15 that I have these comment letters in my hand in the
16 future. When I get done with a comment letter, it looks
17 like this. It's marked up. And it is my responsibility
18 to the public, regardless of what side of an issue they're
19 on, to read them.

20 I appreciate the fact, and I think our other
21 Board members do, the staff reviews these, they condense
22 them in the cliff-note version for us and we go forward
23 with them. But it's important for me to read each and
24 every one of these.

25 Some of these are prepared by grassroots

1 organizations, some of them are prepared by organizations
2 of national notoriety. Most of them arrived on October
3 the 20th, which I realize was the deadline. I received
4 them yesterday because I was out of the office the day
5 before. And for us to do our job correctly, I think it's
6 important that we create a mechanism that we receive these
7 comment letters in a more timely basis. I would assume
8 that it would help yourself and the rest of staff as well.
9 And I just want to go on the public record to state that
10 we need to move forward with some improvement in this
11 process, because there's a lot of time that was spent here
12 that hasn't been thoroughly reviewed by this particular
13 Board member and I don't feel right about that.

14 And Like I said, I'm not chiding you. You just
15 happen to be there. I wanted to make this comment before
16 we went forward with the process. And I realize in this
17 month as well there was an exception to procedure for
18 reasons beyond anyone's control. But the more time -- you
19 know, I just went to a state college, and it takes me
20 longer to read than some of my colleagues that went to Cal
21 and other places.

22 (Laughter.)

23 BOARD MEMBER HOPPIN: So if we can address that
24 in the future, I'll let you go.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yes, sir.

1 CHAIRPERSON DODUC: I will definitely second
2 that.

3 BOARD MEMBER WOLFF: I think that the British
4 Parliament would say something like, "How's that one?"
5 When you hear something like that.

6 And I can assure you -- I have two Masters
7 degrees and a PhD, and I could not possibly read those
8 documents any faster than you could, Charlie. So --

9 BOARD MEMBER HOPPIN: So it wasn't a state
10 college deal?

11 BOARD MEMBER WOLFF: No, it wasn't. It wasn't,
12 no.

13 (Laughter.)

14 BOARD MEMBER HOPPIN: But it slowed you down.

15 BOARD MEMBER WOLFF: I did want to ask Mr.
16 Wilson, before you sit down and people start coming, is
17 there any -- are there any comments you feel a pressing
18 need to comment on before people start -- Okay.

19 I just wanted to give you that chance.

20 Thank you.

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Thank
22 you.

23 CHAIRPERSON DODUC: Mr. Baggett?

24 BOARD MEMBER BAGGETT: Yeah, I just have one. I
25 notice since the Klamath was just brought up and it's -- I

1 notice we've recommended change is to listed it for
2 sediment, in which I would concur. And I would just like
3 to make it real clear at some point, and hope that my
4 colleagues agree, that we've put some specific language in
5 there, something to the effect that if the listing is
6 determined to be on tribal lands, that the U.S. EPA should
7 place this water body pollutant on Section 303(d), because
8 we don't have that authority.

9 And, secondly, that it's not the State Board's
10 intent that this listing would affect any decommissioning
11 of any hydroelectric projects or dams in the Klamath
12 River, because I think, you know, you can see that
13 unintended consequence. So I think we need to make sure
14 that that is in clear direction at the regional Board that
15 there is a decommissioning and sediment is released as a
16 result of that decommissioning. It is taken into account
17 of when the TMDLs develop that that is an option as part
18 of the implementation plan.

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We will
20 make that change.

21 CHAIRPERSON DODUC: Thank you, Mr. Baggett.

22 With that, we'll get to speakers.

23 And, Mr. Tim O'Laughlin, are you still here?

24 Mr. O'Laughlin made a special request since he as
25 a very, very important commitment.

1 (Laughter.)

2 MR. O'LAUGHLIN: Thank you very much for allowing
3 me to jump to the front of the line this afternoon. I
4 appreciate that courtesy.

5 My name is Tim O'Laughlin. I represent the San
6 Joaquin River Group Authority. I have not appeared in
7 front of you almost for a year now, so you've had a nice
8 rest --

9 CHAIRPERSON DODUC: We have missed you so much.

10 MR. O'LAUGHLIN: Yeah, I know you have.

11 I have three short issues to bring up in regards
12 to the 303(d). If you remember, back in September of last
13 year, on behalf of the San Joaquin River Group Authority,
14 we filed a petition to delist the lower San Joaquin River
15 for salinity at Vernalis. What we agreed to do was since
16 you had this -- we filed that. And you had this wonderful
17 303(d) process going on, so we figured that it wasn't
18 worth trying to do both at the same time and having two
19 separate hearing records. And as we agreed with your
20 staff, the logical outcome was, is that if you listed the
21 lower San Joaquin River as a 303(d) impaired for salt,
22 boron again, you would be effectively denying our petition
23 to delist the lower San Joaquin River for salt, boron.

24 So it would be helpful for us is if you do one or
25 two things. You could in this order write a brief

1 sentence that basically says "Your petition to delist the
2 lower San Joaquin River for salinity has been denied
3 pursuant to the following" -- or the following above or
4 below or wherever you want to put it. That would be very
5 helpful to us. Because then we could have both of these
6 wrapped up in one package, one administrative record,
7 because we took all of our petition to delist and put it
8 into your 303(d) record.

9 If you don't want to do that, what we would then
10 ask is that you would follow up with another order, which
11 basically says that "We ruled on the 303(d). We've
12 re-reviewed your petition to delist, and we deny your
13 petition to delist for the reasons stated in our 303(d)
14 listing."

15 Either way, I don't care. I just -- I need a
16 ruling from you that you're going to deny our petition to
17 delist. And actually this has worked out quite well from
18 staff and resources, time that we didn't have to go
19 through two separate hearing processes.

20 So if your staff and your counsel would take that
21 under consideration, we would appreciate.

22 The other then inning is, I would ask that -- we
23 didn't find this out until the 303(d) revise came out. I
24 don't know if it's actually -- and it's a strange
25 situation. I'm not going to say that it's -- I don't know

1 what the correct -- I've been trying to find the correct
2 terminology for this. The hearing record was closed.
3 And, granted, your hearing notice said that, you know, you
4 could go seek additional information. And I realize this
5 is a quasi-legislative process and that, you know, you can
6 do what you want. But it seems very strange to us that
7 the hearing record gets closed to everyone. Your staff
8 then contacts a staff person at the Central Valley
9 Regional Water Quality Control Board, not even the
10 regional water quality control board, and requests
11 additional information, which they provided from two draft
12 staff reports, which is no one else saw, which is now the
13 basis to uphold your 303(d) listing for salinity on the
14 lower San Joaquin River, which we never had an opportunity
15 to review, discuss, analyze, or comment on.

16 And not only that. It didn't actually come from
17 the regional board. It came from a staff member, because
18 it's not signed by the executive officer and the
19 communication went from your staff to their staff.

20 And then the other thing that's kind of not good
21 about it is that it's from draft staff reports that have
22 never even been sent to the regional board, let alone the
23 public to review or anybody else. And you're relying on
24 that information.

25 So we'd like you to -- for the record, so it's

1 clear, we're objecting to that, and we've noted that in
2 the record. But we would ask that you would have that
3 particular document withdrawn from the record.

4 And then, finally, one last thing is, we've
5 noticed selenium is back on the list for the San Joaquin
6 River. And we don't understand, and there's little or no
7 documentation in the records, selenium pops back up on the
8 list again. And we're kind of perplexed about why that's
9 back on the list again.

10 Those are my comments. Thank you for your
11 consideration.

12 If there's any questions, I'd be happy to answer
13 them.

14 CHAIRPERSON DODUC: Thank you, Mr. O'Laughlin.
15 And thank you for the suggestions about more efficiency in
16 our processes in responding to your petition.

17 MR. O'LAUGHLIN: Thank you very much.

18 CHAIRPERSON DODUC: I would like Mr. Wilson or
19 Mr. Blum to address Mr. O'Laughlin's concern regarding the
20 record in the draft staff report that was received from
21 the regional water board.

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In
23 evaluating the record, the information that was sent by
24 Mr. O'Laughlin, I consulted with the regional board staff
25 to figure out how they proceeded with developing their

1 basis for finding that standards were not met in this
2 water body.

3 So I sent an e-mail to a person named Les Grober.
4 And he provided me the information that -- and I think it
5 was from the staff reports that were used to develop the
6 TMDL for the salt, boron TMDL. He provided me that
7 information that showed me, to inform me of where they
8 were with this effort. And so I evaluated that in light
9 of Mr. O'Laughlin's information in the record. And I
10 viewed that information as in-house information. And I
11 just referenced that report that Mr. Grober sent me.

12 MR. O'LAUGHLIN: I have --

13 CHAIRPERSON DODUC: Welcome back, Mr. O'Laughlin.

14 MR. O'LAUGHLIN: Well, yeah, thank you.

15 Just so the record's clear, the reports that were
16 sent were not sent in regards to the TMDLs that have
17 actually been adopted, but were based upon draft staff
18 reports that were in the process of being done for the
19 upper San Joaquin -- the upper San Joaquin River for the
20 establishment of salt, boron TMDL objectives upstream.

21 See, and that's a disconnect here, because -- I
22 mean just one more second -- is the disconnect is we said
23 that the Vernalis' salinity standards have been met for 12
24 years. And there's no disputing that. So the question
25 that was sent to regional board was, "Well, how do you

1 figure out that you have exceedances?" Well, wait. We're
2 meeting Vernalis. The information that was received by
3 your staff had to do with upstream violations. But there
4 can't be any upstream violations, because there's no water
5 quality objective upstream and there's been no designation
6 of beneficial uses upstream that will be protected by
7 those, nor are there any standards.

8 So it's kind of -- it's a strange situation where
9 I'm saying we've met the standard -- everybody agrees
10 we've met the standard. And then in the staff -- the
11 draft staff report they got back from Les has to do with
12 upstream standards and objectives that you told them to
13 adopt that they're going to come to us in May of 2007
14 with.

15 But that's not what the issue was about. And not
16 only that, it was all draft information.

17 So I'm done. And I thank you for your time very
18 much. And I appreciate you putting me through to the
19 front of the line.

20 CHAIRPERSON DODUC: Thank you, Mr. O'Laughlin.

21 Any other questions, comments, Mr. Blum, Mr.
22 Wilson?

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I did not
24 use the upstream information at all. I used the data that
25 was in the record for the San Joaquin River at Vernalis.

1 Over the last ten years I found 71 violations of the
2 standard. In that period under the binomial approach
3 standards have been met. In the period from 1986 to about
4 1998 those were critical water years, and standards were
5 not met in that time period. When you look at -- use the
6 binomial approach required by the listing policy,
7 standards are not met.

8 So it's not the upstream data in any way.

9 CHAIRPERSON DODUC: Mr. Baggett, and then Dr.
10 Wolff.

11 BOARD MEMBER BAGGETT: I think probably the
12 simplest thing -- we're not going to resolve the evidence
13 here. It's not before us. We don't have it.

14 It seems to me if we could figure out some way
15 today to deny the petitions as part of this adoption, then
16 we'll let other bodies sort out the --

17 (Laughter.)

18 BOARD MEMBER BAGGETT: -- efficacy of the truth
19 of the evidence so we don't have to deal with it. I just
20 think that if we could somehow incorporate a motion
21 denying the petitions so it's presented in a --

22 CHAIRPERSON DODUC: Yeah, Mr. O'Laughlin has
23 suggested an addition of one sentence.

24 BOARD MEMBER BAGGETT: Is that a problem with the
25 attorneys and our -- I mean it was truly brought before us

1 last -- a year -- Jeez, over a year ago. And we did fold
2 it into this. But it probably was at water rights and now
3 bifurcated divisions.

4 CHIEF COUNSEL LAUFFER: My only concern -- and I
5 think Mr. O'Laughlin correctly characterizes what the
6 effect of adopting the 303(d) list today is. The issue
7 is, if there is a specific request for the petition, you
8 know, in other words to delist, that action hasn't been
9 noticed up to today. And I think that's a sufficiently
10 discrete issue.

11 Something like a petition, as the Board knows on
12 water quality matters, if it fails to raise substantial
13 issues, it could be denied by the Executive Director. The
14 Exec -- I think what Mr. O'Laughlin is getting at -- and
15 correct me if I'm wrong -- is he just wants a clear
16 document, to make it clear that the Board has ruled. And
17 so I think based on the Board's action today, the
18 Executive Director could issue and to deny --

19 CHAIRPERSON DODUC: Dr. Wolff.

20 BOARD MEMBER WOLFF: I think it's critical though
21 that petitions to be denied in whatever format that the
22 rationale for the denial be clear. And what I've heard in
23 these last few exchanges is a lot of confusion.

24 My understanding for the denial of this object in
25 the briefings that I received was that the means which

1 have been employed to achieve the standards over the last
2 12 years, or whatever the exact time period is, are means
3 which may not continue into the future, are means which
4 might not be supportable in the event of a six-year
5 drought like we had '87 to '93 or so. And so this sort of
6 rationale needs to be expressed. If it doesn't exist in
7 this document, then we shouldn't be denying the petition
8 in this document. If we want to deny it here, then we
9 need to add the rationale. If the Executive Officer is
10 going to send a letter, we need to be darn sure that the
11 letter explains the rationale for the denial. Because, as
12 Mr. Baggett said, there are other bodies which may take
13 this up. And if we haven't been clear what our rationale
14 was, then, you know, we're just wasting everyone's time.
15 It will be an endless process.

16 CHAIRPERSON DODUC: All right. With that, we'll
17 move -- Mr. Hoppin any comment?

18 Thank you, Mr. O'Laughlin. Best wishes to your
19 son.

20 MR. O'LAUGHLIN: Thanks.

21 CHAIRPERSON DODUC: Ms. Strauss, followed
22 by Central Valley Regional Board and then Mr. Jose Angel
23 from the Region 7, Colorado River.

24 MS. STRAUSS: Good afternoon, Madam Chair and
25 Board members. I'm Alexis Strauss from the U.S. EPA. And

1 on behalf of our agency, we'd like to extend our
2 appreciation for you holding this hearing and, in
3 particular, for the several years of sustained effort put
4 forward by the State Board and the regional boards in this
5 matter. Craig Wilson and his team have done an
6 extraordinary job to compile what is before you, looking
7 it over, 2300 individual assessments.

8 We are very pleased that I can say that we concur
9 with over 99 percent of the package which they recommend
10 to you.

11 We did, as you can tell from the package that Mr.
12 Hoppin had raised, provided detailed comments, as did many
13 others. I'd like to just highlight a few of our key
14 comments; but, most importantly, urge that the Board might
15 consider adopting the list as soon as possible, as there's
16 so much for us now to turn to in working on the integrated
17 report for '07-'08.

18 I know that on many occasions we've all rued the
19 fact that this statutory obligation comes around so
20 quickly and there's so much work that results from it. It
21 would be lovely if it were not every other year. But in
22 the meantime, it will be good to bring this particular
23 process to a close.

24 We indeed appreciate and support several of the
25 listings in the proposed final list per our comments,

1 things like several of the Central Valley water straits on
2 ex species in temperature, Laguna into Santa Rosa for
3 nitrogen and phosphorus, L.A. Harbor for the several
4 toxicants noted.

5 I think that the decisions to list exotic
6 species, should you make them, are consistent with the
7 recently approved state program to focus on exotic species
8 controlled by regulating ballast water discharges. And
9 I'm hopeful that I may yet come to be able to work on
10 that, bringing the federal program in line with the
11 state's leadership on this matter.

12 In addition, regarding the exotic species, these
13 listings will help address the recent ocean conservancy
14 litigation against EPA and would avoid the need for EPA to
15 add these listings.

16 We also support the team's decision not to list
17 the lower Lost River for temperature, not to list Santa
18 Monica Bay for chlordane, not to list San Gabriel River
19 for toxicity. I think these decisions would enable the
20 state and EPA to focus on the true priorities and not to
21 be working on TMDLs that aren't needed for these waters.

22 There are indeed just a handful of matters where
23 we differ with the recommendations or, based on the
24 record, couldn't determine the basis for the decisions.
25 And just to summarize: In ten situations we think that

1 waters may need to be listed that are not presently
2 proposed for listing: In about nine cases there are some
3 listings proposed that we professionally just disagree and
4 think do not need to be included. In some cases it's a
5 little bit unclear, as Craig had noted. And we'll be
6 working with him and his team to review the information
7 supporting the assessments and what comes forward. So,
8 for example, we'll carefully review the detailed
9 information about 45 beaches. And if warranted, we could
10 add them to the list after your process is concluded if
11 you don't have time to deal with that now.

12 Might I ask for 30 seconds more?

13 CHAIRPERSON DODUC: Please, go ahead.

14 MS. STRAUSS: Thank you.

15 The next steps. Once you have a final record
16 submitted, we will review that and work with the team here
17 to obtain any additional documentation, if needed; and
18 expect to approve virtually all of the listing decisions
19 you may make, although we might need to make a few changes
20 as we had noted.

21 With regard to Board Member Wolff's query, I'd
22 like to just address that for a moment, because it comes
23 into play -- what comes into play is the issue with regard
24 to the listing policy versus how the standards themselves
25 are worded.

1 Most of the cases where we identified additional
2 waters for listing involve cases where staff may have
3 relied solely on the binomial assessment method which is
4 in the listing policy. The binomial tests in the policy
5 set allowable exceedance frequencies that are less
6 stringent than the applicable water quality standards in
7 some cases, particularly for toxicants and conventional
8 pollutants. So where you have a listing policy not in
9 agreement with what constitutes an exceedance of a
10 standard, reliance on the binomial tests would mean that
11 here today waters are not being proposed for listings that
12 do exceed toxic or conventional pollutant standards. It
13 is more an issue of the exceedance frequencies than any
14 great particular disagreement, and I think we can work
15 through these.

16 As we might wrap up this process and move on,
17 we've made some suggestions about how the next process
18 could be improved and hope to work with you on that.

19 Thank you very much.

20 CHAIRPERSON DODUC: Thank you, Ms. Strauss.
21 Thank you especially for those recommendations on how to
22 improve the process. And thank you for accepting our 1
23 percent degree of disagreement.

24 (Laughter.)

25 MS. STRAUSS: It's great to be so close. Thank

1 you.

2 CHAIRPERSON DODUC: Questions or comments?

3 Thank you.

4 We'll now hear from the Central Valley Regional
5 Board.

6 MS. CREEDON: I think we have a presentation.

7 Good afternoon, Chair Doduc and Board members.

8 My name is Pamela Creedon and I'm the Executive Officer of
9 the Central Valley Water Board. And I'm here today with
10 staff because the item before you is of critical
11 importance to our board.

12 (Thereupon an overhead presentation was
13 Presented as follows.)

14 MS. CREEDON: My staff has worked with your staff
15 for the last year and a half on 303(d) listing, and we
16 appreciate the opportunity to review your staff's products
17 and analysis prior to release to the public. However,
18 there are -- while there are positive changes that have
19 been made, there are several significant policy issues
20 that remain for us. And I think you know that for me to
21 come up here and to say I'm not in full agreement with
22 State Board staff and EPA is hard for me, because I value
23 working with both of you so much.

24 CHAIRPERSON DODUC: Let me guess. It's not more
25 than 1 percent, is it?

1 --o0o--

2 MS. CREEDON: We are very concerned that your
3 staff has proposed listing certain constituents using an
4 approach to interpret our narrative objectives contained
5 in our basin plan using an approach that's inconsistent
6 with how our board interprets the narrative objectives.
7 So we respectfully request that you defer the
8 interpretation of our narrative objectives to the regional
9 board.

10 It's important for the Board to have the primary
11 responsibility of interpreting compliance with our
12 objectives. And we -- not only they evaluate compliance
13 for our 303(d) listing, but also for our other regulatory
14 programs.

15 So I'm going to have Joe Karkoski, a senior
16 engineer with my staff, come forward to complete the
17 presentation.

18 Thank you.

19 --o0o--

20 MR. KARKOSKI: Good afternoon. So I've got about
21 three issues, two of which are exact opposite of what you
22 heard from Alexis. One is in agreement with her.

23 The first one is on the exotic species issue.
24 When we look at the fact sheets that the staff prepared,
25 what is actually listed are non-native aquatic species.

1 And they're being listed because they are identified as
2 pollutants. And so we looked at the fact sheets and
3 pulled out these specific species that are identified
4 essentially as pollutants. So Channel catfish, which of
5 course are consumed by fishermen and their families in the
6 Delta; Mosquito fish, which are used as a biological
7 control by mosquito control districts; and of course
8 largemouth bass. There's a big bass recreational sport
9 industry in the Delta.

10 So in contrast to what Alexis mentioned, this is
11 not about aquatic invasive species coming from ballast
12 water. These species have been established in Central
13 Valley waterways for sometime over 100 years.

14 --oOo--

15 MR. KARKOSKI: Now, move on to our temperature
16 objectives.

17 So the trick here again is we -- we have a
18 narrative objective that's being interpreted. And
19 basically the narrative says that the natural temperature
20 cannot be altered unless it's demonstrated to the regional
21 board that beneficial uses are not adversely impacted.

22 So the approach your staff took is twofold. One
23 is they picked a 21 degree Celsius annual maximum
24 criterion from the literature. And they also looked at
25 fisheries data. That 21-degree C annual mass cannot be

1 MR. KARKOSKI: So then you go downstream. This
2 is a great trout fishery according to our Redding office
3 staff.

4 --o0o--

5 MR. KARKOSKI: And you look at the temperature
6 profile. And there are multiple exceedances of the
7 21-degree C maximum during the hottest part of the summer.

8 So this is all due to natural heating.

9 --o0o--

10 MR. KARKOSKI: Okay. So the last issue that I
11 want to touch on, also EPA touched on, and that is there
12 are some waters, and just a few, that are proposed for
13 delisting although the standards are not attained. So
14 it's that 1 in 3 or allowable exceedance rate which
15 applies to toxic pollutants. So in a few cases that's not
16 yet being met.

17 The other thing is we also need to make sure we
18 consider additive toxicity.

19 So we've been before the Board before to talk
20 about Diazinon and Chlorpyrifos and the additive toxic
21 effect. And so that needs to be considered as part of a
22 weight of evidence approach which is part of your listing
23 policy. So we don't strictly need to rely on binomial
24 method. There is an option using the weight-of-evidence
25 approach, which we think justifies continued listing.

1 BOARD MEMBER BAGGETT: So basically you agree
2 with the changes staff has recommended?

3 MR. KARKOSKI: No, they didn't --

4 BOARD MEMBER BAGGETT: They've got Diazinon,
5 Chlorpyrifos TMDLs cover all Delta waterways. Is that
6 what you're --

7 MR. KARKOSKI: No. No, there were three other
8 water bodies. I'll show you on the next slide.

9 --o0o--

10 MR. KARKOSKI: That we would suggest still needs
11 to remain on the list. There's clearly improvement. It
12 may well be the next time we come before you those waters
13 will clearly be attaining standards. It's the Sacramento
14 River, Feather River and Morrison Creek for Diazinon. We
15 already have TMDLs done for those. So there's a plan in
16 place. You've approved our basin plan amendment. So
17 we're moving forward.

18 So our recommendation is to basically give the
19 regional board the opportunity to interpret our narrative
20 objectives. We ask that you not list the exotic species
21 for the Delta and Cosumnes River and San Joaquin, and not
22 list temperature for the North Fork Feather and for Willow
23 Creek.

24 And should you decide to go ahead with those
25 listings, we put in our comment letter some suggested

1 language to add to the resolution just to clarify the
2 scope of the listing and what you expect us to do.
3 Because, again, like with temperature, it seems like it's
4 clearly related to hydro power operations and dams. It's
5 not a discharge of waste. And with the exotic species, I
6 don't think we can regulate non-native established
7 species.

8 So that's all I got.

9 CHAIRPERSON DODUC: Dr. Wolff.

10 BOARD MEMBER WOLFF: A question about Diazinon.

11 You said the TMDL for those segments, Sacramento
12 River, Feather River, and Morrison Creek, that TMDL's been
13 adopted?

14 MR. KARKOSKI: Yeah.

15 BOARD MEMBER WOLFF: And it's been approved by
16 this Board?

17 MR. KARKOSKI: For the Sacramento and Feather
18 River, yes. Morrison Creek we actually incorporated that
19 into a storm water permit, so that didn't require your
20 approval. But it's being worked through the storm water
21 permit.

22 BOARD MEMBER WOLFF: They've been approved by
23 EPA?

24 MR. KARKOSKI: Yes.

25 BOARD MEMBER WOLFF: Okay. So there are measures

1 already in place fully through the process which are going
2 to protect those reaches from Diazinon. And so I'm not
3 sure whether the listing or the delisting has any -- I
4 guess my question is: Does a listing or delisting really
5 have any consequence then for what will actually take
6 place on the ground with respect to protection of those
7 reaches?

8 MR. KARKOSKI: It has a potential consequence in
9 terms of precedence. So you do have one portion of your
10 list that says, "These waters still are not attaining
11 standards, but a TMDL has been approved by the U.S. EPA."
12 So we're just saying put those waters back on that list,
13 acknowledge that we're moving forward, standards aren't
14 quite attained.

15 BOARD MEMBER WOLFF: Well, what difference does
16 it make if I take off the list in terms of on-the-ground
17 implementation? Does it undermine implementation in a
18 way --

19 MR. KARKOSKI: It may well, because basically the
20 State Board is saying that standards are being met, right?
21 So if you say standards are being met, then there's less
22 incentive to actually move forward with some of the
23 on-the-ground implementation that we're trying to get done
24 in those watersheds.

25 BOARD MEMBER WOLFF: I see. And there are

1 measures in there which haven't been implemented yet?

2 MR. KARKOSKI: Correct.

3 BOARD MEMBER WOLFF: And which perhaps will not
4 be implemented if we delist?

5 MR. KARKOSKI: Well, right. We'll be in an
6 argument with -- "Well, gee, why are you guys making us
7 monitor? Why are you making us do this?" State Board's
8 decided that the standards are attained.

9 BOARD MEMBER BAGGETT: And also it's just an
10 opportunity for funding, you know, for other -- if it's
11 impaired, you can, you know, proposition monies. There's
12 a reason now.

13 BOARD MEMBER WOLFF: So, Mr. Wilson, could you
14 comment on this?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In the
16 examples, these examples --

17 BOARD MEMBER WOLFF: Oh, I'm sorry. Just the
18 Diazinon.

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I can't
20 remember the exact numbers, but I think there were two
21 hits out of about 116 to 120 samples. And that was
22 sufficient to remove it from the list. That's the factual
23 basis for that delisting.

24 BOARD MEMBER WOLFF: Well, but their point is
25 that the weight of evidence suggests continued listing

1 even though the statistics has delist.

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Right.
3 The weight of evidence -- you know, to keep it on the list
4 based on, you know, more -- to convince people that you
5 need more monitoring, I mean I guess that's an issue that
6 needs to be addressed. But, you know, I was looking at
7 the data, and the data says it shouldn't be listed. I
8 mean I don't have a better response.

9 MR. KARKOSKI: Yeah, I mean basically we looked
10 at the information, and the standards are not yet
11 attained. I think when the standards are attained, we're
12 clearly going to advocate delisting. But right now it's
13 close but it's not there.

14 BOARD MEMBER WOLFF: Are there any stakeholders
15 who have commented that they support the delisting?

16 MR. KARKOSKI: Yeah, I think so. I can't
17 remember --

18 CHAIRPERSON DODUC: Actually that's a great
19 segue, because I'm going to toss my blue cards out the
20 window, sort of.

21 The blue cards don't give me any indication of
22 the interest in various regional water boards issue. And
23 judging how things are going, I would like to focus this
24 on one region at a time so that maybe we can vote on the
25 listing for one region at a time, rather than wait till

1 the end to vote on the whole thing.

2 So given the fact that we already heard three
3 speakers pertaining to the listing in the Central Valley
4 Regional Water Board area, let me now ask for the speakers
5 who have provided comment cards who wish to speak on
6 matters pertaining to the listing in this regional water
7 board area.

8 So would you please come up.

9 BOARD MEMBER WOLFF: That sounds fine. If we
10 could get anyone who wants to speak to Diazinon speak
11 first, that would help me to maintain my train of
12 thoughts.

13 CHAIRPERSON DODUC: Exactly.

14 BOARD MEMBER WOLFF: Thank you.

15 CHAIRPERSON DODUC: So the floor is open. Anyone
16 wishing to comment on listing in the Central Valley
17 Regional Water Board watershed, please come up. And those
18 of you who specifically want to talk about Diazinon,
19 please let me know and come up first.

20 Diazinon, anyone?

21 MS. SELF: Hi. My name is Deb Self. I'm
22 Associate Director of Baykeeper. Thank you very much for
23 the opportunity to speak. I'll keep my comments
24 specifically to Diazinon right now.

25 We would just certainly say that while the

1 binomial analysis may provide a lot of evidence for a
2 listing if weight of evidence is really important. And
3 certainly if the Water Board feels that water quality
4 standards are not attained, then we feel strongly that we
5 should support them, the continued listing of those water
6 bodies for Diazinon.

7 Thank you.

8 CHAIRPERSON DODUC: Great.

9 Any other comments on Diazinon?

10 Ms. Self, do you wish to make any other comments
11 on other listing in the Central Valley Regional Water
12 Board?

13 MS. SELF: I do, thank you.

14 Let's see. I don't really have my comments
15 divided up by region, but I'll do my best.

16 Okay. We do definitely support the listing of
17 the various Delta waterways for invasive species. I can
18 see the points about the largemouth bass.

19 Certainly temperature for the North Fork of the
20 Feather River, Willow Creek. I think it's important to
21 note that temperature is in fact a pollutant and hydro
22 power has to be considered in terms of its effect on water
23 quality standards. So we definitely support that listing.

24 And we also support the San Joaquin River listing
25 for selenium.

1 We do believe that there is some other --

2 CHAIRPERSON DODUC: We saw all changes that the
3 staff has proposed.

4 MS. SELF: And we support those.

5 CHAIRPERSON DODUC: Great.

6 MS. SELF: On the other hand, we believe that
7 there is sufficient evidence for the listing of several
8 other water bodies that are definitely affected by highway
9 toxic pollutants. And let me see if I can divide these
10 up.

11 We do support and we would like the Delta be
12 listed for pyrethroids.

13 And I believe that's it for Region 5.

14 CHAIRPERSON DODUC: All right. Thank you.

15 MS. SELF: Thank you.

16 CHAIRPERSON DODUC: Next.

17 MS. EVERITT: I have my statement here.

18 Good afternoon, Chair Doduc and members of the
19 State Water Resources Control Board. I'm Sara Everitt
20 representing Pacific Gas & Electric. And I would like to
21 thank you and the State Water Resources Control Board for
22 the opportunity to comment on the proposed revisions to
23 the State's Section 303(d) listing. We provided written
24 comments both in January and again on October 19th, 2006.

25 PG&E acknowledges and appreciates the State Water

1 Resources Control Board staff's tremendous effort in
2 preparing this complicated and detailed document.

3 PG&E is concerned that the State Water Resources
4 Control Board staff does not have adequate time to address
5 all the comments on the new lines of evidence added and
6 would suggest delaying the issuance of the document until
7 all the comments may be adequately evaluated.

8 PG&E provided comments on six different listings.

9 First, it is PG&E's understanding that after a
10 reconsideration of the data, the staff will recommend that
11 the Lower Bear River Reservoir, the Mokelumne River and
12 Sugar Pine Creek not be listed for dissolved copper.

13 PG&E believes that the Feather River should not
14 be listed for mercury -- should only be listed for mercury
15 where there is evidence that mercury standard is exceeded.
16 This segment is the Feather River North Fork below the Poe
17 Reservoir. There is no mercury exceedances on the North
18 Fork Feather River between the Poe Reservoir and Cresta
19 Dam, and therefore this listing should be revised to
20 reflect this fact.

21 PG&E also believes that the Feather River North
22 Fork below Lake Amador should not be listed for
23 temperature. The use of a single water temperature
24 criteria does not address the complexity of the river.
25 And, further, the data -- there's data and modeling which

1 indicates that the river would not have met this criteria
2 historically even at the turn of the century.

3 In addition, there were seven new lines of
4 evidence added, with the first five providing information
5 on fish population between 1940 and 1980. However, none
6 of the data was available from the recent relicensing
7 effort for the Upper North Fork Feather River Project and
8 the Rock Creek Cresta project was used as part of the
9 determination.

10 This data included studies on fish population and
11 catch rates, demonstrates that populations and catch rates
12 are much closer to or exceed the data used by the State
13 Water Resources Control Board staff to represent
14 historical conditions.

15 PG&E believes that the data collected as part of
16 the relicensing process must be used to accurately assess
17 the current conditions of the Feather River before making
18 determinations on temperature.

19 These reports were provided to the State Water
20 Resources Control Board, Division of Water Rights starting
21 in 2001 and continuing through 2005 and were submitted
22 again with our comments on October 19th, 2006.

23 Lastly, PG&E believes Willow Creek should not be
24 listed for temperature because, as with the Feather River,
25 using a single water temperature criteria does not address

1 the complexity of the river. Further, the criteria is for
2 a single cold water species, and Willow Creek supports
3 both warm and cold water species.

4 Finally, as a part of the Crane Valley Water --
5 Crane Valley Project relicensing, temperature and water
6 quality studies will be performed that will provide
7 invaluable insights into a temperature determination. A
8 listing at this time is premature.

9 Again, thank you for the opportunity to comment
10 on the proposed 303(d) listing. I'm available to answer
11 questions, as is my colleague, Tom Jair, a senior project
12 manager in our hydro relicensing project.

13 CHAIRPERSON DODUC: Thank you.

14 Dr. Wolff.

15 BOARD MEMBER WOLFF: When was the information on
16 the Feather River and Rock Creek Cresta project originally
17 submitted?

18 MR. JAIR: I'm Tom Jair with PG&E and I'm
19 responsible for that kind of information that is submitted
20 through our relicensing. Beginning in 2001 that
21 information was submitted.

22 BOARD MEMBER WOLFF: Subcommittee to the Water
23 Rights. When did you submitted it to the group working,
24 you know, through a 303(d) list? They've held workshops,
25 they solicited comments, so forth. When was that data

1 submitted to them or when were they told that the data was
2 available?

3 MR. JAIR: I'm not familiar when it was submitted
4 to them, if we submitted it to them at all. They
5 solicited the Division of Water Rights staff for that kind
6 of information. That's my understanding.

7 BOARD MEMBER WOLFF: I see.

8 CHAIRPERSON DODUC: Mr. Wilson.

9 BOARD MEMBER WOLFF: Do you have a comment on the
10 timing of the data coming to your attention?

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We
12 tracked down the information as part of our data
13 solicitation process from the Division of Water Rights and
14 we obtained it from them, and completed that record for
15 our process and didn't augment it at all after we obtained
16 it. And that was --

17 BOARD MEMBER WOLFF: And then why do they reach a
18 different conclusion than you did?

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, you
20 know, a lot of these -- you mean on the temperature data?

21 BOARD MEMBER WOLFF: Maybe I'm misunderstanding.
22 But I thought that the evidence that -- they're claiming
23 the evidence that they, you know, submitted is
24 overwhelming. And yet, you know, our staff is saying the
25 opposite. And I thought perhaps it was because of a lack

1 of communication on the evidence. Maybe I'm
2 misunderstanding.

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, on
4 the temperature data I think it's pretty clear. And like
5 the disagreement is over which number to use. The data
6 that was available to us was annual maximum temperature
7 data, and so we used the actual -- the annual maximum
8 value in our assessment. We had ten or so sites over a
9 four-year period. And we found a large percentage of
10 those sites over that four-year period did not meet that
11 21-degree value, and that's what we used.

12 Had we had MWA, maximum weekly average weekly
13 temperature data, we would have used that value and maybe
14 come to a different conclusion. But we didn't have that
15 information before me.

16 BOARD MEMBER WOLFF: I see. Thank you.

17 Mr. Bolland, do you have a comment?

18 CHAIRPERSON DODUC: All right. Thank you.

19 MR. BOLLAND: Chair Doduc, Board members. I'm
20 David Bolland. I'm with the Association of California
21 Water Agencies. I did have a statement in general about
22 kind of background of interest here on policy issues. I'm
23 going to save that till another region where we've got
24 more focus.

25 But on this particular --

1 CHAIRPERSON DODUC: Actually I was going to ask
2 for a general statement after we finish with Region 5.

3 MR. BOLLAND: Oh, all right.

4 Okay. Well, back to Region 5 on the specific
5 temperature thing on the North Fork of the Feather, again
6 I just wanted to underscore our concern from a policy
7 perspective.

8 I think Joe Karkoski laid it out very clearly,
9 that the regional board has made a determination about how
10 to interpret their numeric standards and that the State
11 Board staff should defer to the regional board in this
12 particular case. And there are some technical reasons why
13 that needs to happen. I think Joe did a good job of
14 documenting that in the record. And we're concerned that
15 this sort of judgment call by the State Board staff sets a
16 bad precedent for the way this process works around the
17 state, not just on maximum temperature exceedances, but
18 other kinds of, I guess you'd call it, subjective calls.
19 And I guess we would like your consideration of Joe's
20 comments, and we would support those.

21 Thanks.

22 CHAIRPERSON DODUC: Thank you.

23 MR. DYOK: Madam Chair, Board members. My name
24 is Wayne Dyok. I'm a consultant to Plumas County. And
25 Plumas County very much supports the statements of the

1 regional board, Pacific Gas and Electric, and the
2 Association of California Water Agencies with respect to
3 the recommendations not to list the Upper North Fork
4 Feather River for temperature.

5 We would look forward to working with the State
6 Board, regional board and other participants to come up
7 with a better approach, if you like, to identify whether
8 the Upper North Fork should be listed.

9 We believe that the 21 degree Celsius temperature
10 is flawed. We provided some evidence to that in our
11 letter to you last Friday. And we would hope that you
12 would take that into account in your determination.

13 Thank you.

14 CHAIRPERSON DODUC: Thank you very much.

15 Any other commenters on Central Valley?

16 It's so nice to be seeing people so courteous to
17 each other.

18 MS. SHEEHAN: I'll be brief.

19 Linda Sheehan, California Coast Keeper Alliance.
20 I support the proposed listings for exotic species and
21 temperature in the Central Valley.

22 Thank you.

23 CHAIRPERSON DODUC: To list or delist? The
24 temperature --

25 MS. SHEEHAN: To list.

1 CHAIRPERSON DODUC: To list?

2 MS. SHEEHAN: Yeah, to list.

3 Thanks.

4 CHAIRPERSON DODUC: Thank you.

5 MS. PAULSON: Good afternoon. My name is Cindy
6 Paulson. I'm an environmental engineering with Brown &
7 Caldwell, here today representing the Turlock Irrigation
8 District.

9 I've been working with the TID over the last five
10 years on water quality issues in the Harding Drain. And
11 I'm happy to be here today and want to thank the State
12 Board staff in their efforts to work with us in reviewing
13 the data and the analyses that we've provided and their
14 decision to delist the Harding Drain for both ammonia and
15 Diazinon.

16 It's not entirely clear to me here today what the
17 final decision was with regard to Chlorpyrifos in the
18 Harding Drain. We'd greatly appreciate some clarification
19 there.

20 But I am happy to report as well that the TID is
21 very actively engaged in a local effort, a Prop 50 funded
22 effort working with stakeholders to continue to address
23 water quality issues in the Harding Drain and, in
24 particular, to address the remaining listing for unknown
25 toxicity. So they will continue those efforts.

1 And I would appreciate if we could get a little
2 bit of clarification on Chlorpyrifos.

3 CHAIRPERSON DODUC: Thank you.

4 And, Mr. Wilson, please address Ms. Paulson's
5 question.

6 SENIOR ENVIRONMENTAL SCIENTIST WILSON:

7 Certainly.

8 On Chlorpyrifos there were approximately 36
9 exceedances of the standard of about 300 or so samples.
10 And that was enough to keep it on the list. And that's
11 our justification.

12 There was some creative use of the listing
13 policy. We got some interesting comments on this, using
14 decreasing trends in this pollutant. It's my belief that
15 by using the decreasing trends, it circumvents the
16 delisting factors that the Water Board adopted in '04.

17 As you may recall, Mr. Baggett, it requires --
18 the policy requires more information to get off the list
19 than to get on the list. And so by using these trends in
20 water quality, you might get to that delisting more
21 quickly than you would if you used the binomial approach.

22 And that's kind of the crux of the different --

23 BOARD MEMBER BAGGETT: Yeah, a very contentious
24 decision.

25 CHAIRPERSON DODUC: Thank you.

1 Mr. Levine.

2 MR. LEVINE: Yes. Alan Levine for Coast Action
3 Group. We have some experience with stream temperatures
4 and salmon. I just wanted to make a clear statement about
5 representations that were made about temperature in the
6 case of the North Fork Feather and Willow Creek. And I
7 forget the name of the other creek.

8 Twenty-one degrees is very, very warm. You start
9 getting concerned at 17. Twenty-one's near lethal. It
10 depends on the duration and frequency, and I'd just like
11 you to keep that in mind.

12 Thank you.

13 CHAIRPERSON DODUC: But you support the listing
14 of the temperature in those water bodies?

15 MR. LEVINE: I haven't seen all of the data. So
16 I would leave it up to your staff to make the
17 interpretation.

18 CHAIRPERSON DODUC: Okay. Thank you.

19 Any other comments on Central Valley Region?

20 All right. What is the pleasure of the Board?

21 We have a lot of comments. There was a question on
22 Diazinon. There was a suggestion regarding other
23 pesticides. So --

24 BOARD MEMBER WOLFF: May I ask a question of
25 Central Valley staff?

1 CHAIRPERSON DODUC: Please.

2 BOARD MEMBER WOLFF: I'm curious, if we do list
3 the exotic species and temperature, when the TMDLs for
4 that might begin. I think it's a long time from now,
5 isn't that correct?

6 MR. KARKOSKI: Well, we would try not to make it
7 a priority, because we don't have any authority to control
8 the reproduction of catfish or mosquito fish. And with
9 the temperature issue, you know, we --

10 BOARD MEMBER WOLFF: You don't? I thought the
11 Water Board system was all powerful.

12 MR. KARKOSKI: Well, that's what I've been told.

13 BOARD MEMBER WOLFF: I thought the fish at least
14 paid attention to us.

15 (Laughter.)

16 MR. KARKOSKI: Yeah. But I think -- you know,
17 one of the issues is sort of the unintended consequences
18 of listing based on, say, mosquito fish is then -- the
19 mosquito control districts are discharging mosquito fish.
20 So does that then obligate us, if you all say that
21 mosquito fish are pollutant, to regulate the discharge of
22 mosquito fish?

23 Then the other situation we have, you know,
24 whether we address it as a TMDL or not, is we may have
25 some waters where there are primarily non-natives. So if

1 non-natives are considered a pollutant, do we have to
2 protect non-natives from traditional pollutants?

3 BOARD MEMBER WOLFF: I appreciate all that
4 detail. But I'm actually asking something that's a much,
5 much higher level -- I don't know if it's unfair to you --
6 a much cruder question.

7 MR. KARKOSKI: Okay.

8 BOARD MEMBER WOLFF: That is, if we list for
9 temperature and exotic species, three years from now will
10 really much have happened? I think probably not. And as
11 a result, there will be plenty of time sort out the data
12 and make another decision three years from now, because
13 these are going to be at the end of the line from the
14 TMDLs. So my gut tells me, go ahead and list them. It's
15 not going to harm anyone. And it will keep people focused
16 on the task that ultimately we either need to prove that
17 there's not a problem or we need to move forward for doing
18 something about it.

19 While if we follow your advice to not list them
20 now, then, you know, we sort of have taken them off plate,
21 we just said, "Ah, don't worry about them," which I'm not
22 quite comfortable doing given the ambiguity in the
23 situation.

24 MR. KARKOSKI: Right. I would say first for the
25 exotic species issue, the issue that EPA brought up and

1 the issue that I've heard from the environmental groups is
2 a concern over the discharge of ballast water. So listing
3 that is based on established non-natives, actually diverts
4 attention from that issue and then moves it to something
5 that we're not going to address.

6 But it adds confusion in terms of when our next
7 permits come up or when, you know, somebody says, "Well,
8 the mosquito control district is putting these
9 mosquito" -- So it's not necessarily a TMDL issue per se.
10 It's a potential impact on our other programs, because if
11 there's a reasonable potential that there's a discharge
12 into an impaired water, all of a sudden all of our other
13 programs have to deal with that. It's not necessarily
14 something that will come to the TMDL program.

15 BOARD MEMBER WOLFF: So your response is focused
16 on your concern with respect to exotic species, and the
17 breadth is to help all exotics. But with respect to
18 temperature, perhaps you might -- you know, you're not
19 going to have to do anything in the next three year over
20 that.

21 MR. KARKOSKI: Well, the temperature -- you know,
22 part of what we asked for is if you're going to go ahead
23 with temperature, is to clarify that. For these two
24 listings, the ball's really in your court. I mean these
25 are related to FERC relicensing and hydro power

1 operations. So the main thing we would want clarified is
2 that there's not an expectation that we're going to --
3 that we at the regional board are going to try to address
4 this through issuing permits or anything, because it
5 appears based on the information in the fact sheets, that
6 this is a flow-related issue. I don't even know if it's,
7 you know, temperature really per se. But it's clearly a
8 flow -- there is a flow-related issue in both of those
9 water bodies.

10 CHIEF DEPUTY DIRECTOR HOWARD: A clarification.
11 This is Thomas Howard.

12 We are in the middle of a FERC proceeding in Lake
13 Almanor in which -- which is -- eventually the water from
14 Lake Almanor gets to the North Fork of the Feather. We
15 have the CEQA document that's being prepared for the
16 purpose of dealing with the temperature issues in the
17 North Fork of the Feather through -- some alternatives
18 that we're looking at there, a number of alternatives have
19 been suggested like a temperature curtain or reoperation
20 of the reservoirs. And those are being analyzed. There
21 are four alternatives the State Water Board are going to
22 have to -- going to analyze, or the staff are, and the
23 CEQA document will be finalized in December.

24 But the point is, I'm not sure how -- if the
25 Board decides not to list North Fork temperature, it seems

1 like that would have an impact on our FERC proceeding,
2 because we would -- I would imagine we'd back away from
3 trying to look for temperature solutions in the North Fork
4 of the Feather if there's not an issue of impediment.

5 CHAIRPERSON DODUC: Good point.

6 BOARD MEMBER WOLFF: Thank you.

7 MR. KARKOSKI: Thanks.

8 BOARD MEMBER WOLFF: Well, it's a tough one, but
9 I'm prepared to go ahead and list them all, including
10 Diazinon.

11 Should I state that in the form of a motion?

12 CHAIRPERSON DODUC: So you actually want to list
13 the Sacramento River, Feather River and Morrison Creek for
14 Diazinon?

15 BOARD MEMBER WOLFF: Yes.

16 CHAIRPERSON DODUC: That would be a change -- an
17 addition to the current proposal that's before us for this
18 region?

19 BOARD MEMBER WOLFF: Yes.

20 CHAIRPERSON DODUC: So there's been a motion by
21 Dr. Wolff.

22 Is there a second?

23 BOARD MEMBER BAGGETT: I'd second that.

24 I do have a challenge with the exotic species. I
25 wish Mr. Jennings were here. Where's Bill when I really

1 need him? So I can debate.

2 It's a tough one. But I think EPA seems to have
3 made their call. And we can go to litigate or they can
4 litigate when we end up with it.

5 If you're going to list those though, I mean
6 there's other issues, like pike. I mean pike should be
7 listed. It seems it's clear. And I don't know that it
8 takes a whole lot of evidence before us to list it for
9 pike since they've -- on the lake twice now.

10 And where do we stop with the German Brown?
11 They've raised havoc in Yosemite where I'm familiar with,
12 with the native trout population on the eastern Sierra.
13 But they're a great sport fish. So -- bass. I
14 mean there's a challenge. I don't know that --

15 BOARD MEMBER WOLFF: Can I speak to that Art?

16 BOARD MEMBER BAGGETT: I'd really like to hear
17 from Linda and from Alexis on why -- what we hope to
18 accomplish by listing bass and -- but if we're going to do
19 it, then we've got to start looking at all these other
20 species. Maybe it helps Fish & Game.

21 I'd agree with the temperature, by the way,
22 because there is a proceeding. Regional board doesn't
23 have the -- there's not much they can do. That's a FERC
24 process. They'll deal with it there. Maybe we should
25 make that clear. I would like to see that clear in the

1 motion, that response to TMDL lies somewhere else.

2 CHAIRPERSON DODUC: Ms. Strauss.

3 MS. STRAUSS: I'm very sympathetic to the
4 comments that Pamela, Joe, and Board Member Baggett have
5 made. I wouldn't propose at this stage or ever that we
6 would list by a particular species of fish or organism --
7 an effective organism.

8 I'm just cognizant as we all focused on some of
9 the major ecosystems in California, like the Sacramento,
10 San Joaquin, and Delta, we're all looking at what might be
11 the causative factors in the health of the Bay Delta
12 ecosystem; exotic species has time and again come to the
13 fore.

14 I would suggest that we are trying to pay
15 attention to the role of exotic species that might be
16 sport fish, but just exotic species as a category to be
17 further defined for a specific place. And that we would
18 do our best to reduce the negative impacts or the impacts
19 on beneficial uses from those exotic species through the
20 analytic process that is a TMDL.

21 And I realize that probably neither Joe nor I
22 feel that we have the authority to deal with ballast water
23 at this stage. But if we can help be part of the solution
24 that is to come, include both the state's leadership and
25 other things, I think that it's a task worth doing. We

1 might not get there in the next couple of years, but we
2 should definitely get underway.

3 BOARD MEMBER BAGGETT: So now we can rephrase a
4 bit if it's less species specific. I see a real challenge
5 from --

6 MS. STRAUSS: I don't think it is species
7 specific. I believe it's exotic species as a category.

8 BOARD MEMBER BAGGETT: But the regional board
9 seemed to think it was species specific.

10 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It is not
11 species specific. It is as a category. Because we looked
12 at communities. We didn't look at individual organisms.
13 We're not recommending listing mosquito fish or any other
14 specific organism. We're looking at it as a category.

15 BOARD MEMBER BAGGETT: So, for example, if Fish
16 and Game has a bit of challenges on Lake Davis, they could
17 look to this I guess to provide some support for their
18 position, because we have listed these water bodies
19 impaired for exotic species. Pike's obviously an exotic
20 species in this system. So they would just decide pike,
21 since it is by definition an exotic species, they could
22 use that as a rationale in their CEQA document or their
23 policy documents.

24 I mean does that make -- it seems to me that's
25 the only benefit of doing this really, because we're not

1 going to ask the regional board to come up with a plan to
2 get rid of bass. Well I guess you could have a bass
3 derbies --

4 (Laughter.)

5 BOARD MEMBER WOLFF: If I could just clarify.

6 My understanding was that not Central Valley
7 Board -- perhaps you could speak to this -- was that the
8 Central Valley Board would have been fine with listing
9 certain specific exotic species. It was the generic
10 exotic species listing that raised the concern, because it
11 opens up all these issues you raised.

12 The problem is our staff is not prepared to list
13 them specifically now. As -- points out, trying to list
14 them specifically now is not a good idea. So my thinking
15 in going forward with the listing is that we're basically
16 saying there are exotic species. The problem is they're
17 not all exotic species, but some. And you as the Central
18 Valley Board are going to have to figure out which ones
19 are most important and need to be addressed and so forth
20 and refine the listing over time. That becomes part of
21 your responsibility. Sorry to put it upon you, but it's
22 the only way I could see to go forward from here
23 productively with the fact that there are some real exotic
24 species problems that someone needs to deal with.

25 CHAIRPERSON DODUC: Well, Ms. Creedon, we'll take

1 temperature, you take exotic species.

2 MS. SHEEHAN: Just to -- since I was asked to
3 come up, when I was at the Ocean Conservancy, I initiated
4 two lawsuits on this issue, which is one of the reasons
5 why they're here today. One -- and both of them, you
6 know, emphasized the point that, yes, invasive species are
7 within the definition of pollutants. So it's not as if
8 that we really have a choice. I mean we have to list
9 them.

10 The question of the boundaries of what exotic
11 species means I mean I think is really defined by the
12 303(d). I mean if they don't impair beneficial uses, then
13 they're not a pollutant under the 303(d), I mean. So I
14 think that as you're sort of going through all of this,
15 that will help cull out what's important and what's not.

16 And there is some precedent on this. I mean
17 Region 2 did go through this exercise a number of years
18 ago and did do a TMDL plan for a discharge of invasive
19 species in Region 2. So it's not as if this hasn't really
20 been addressed before. And it's right on their website
21 and you can take a look at it.

22 Certainly one thing that we can start to do is
23 address the discharge of invasive species from vessels.
24 As you know, the Court -- the United States District Court
25 ruled a month ago that -- on September 18th that, you

1 know, the EPA needs to get rid of its regulation exempting
2 the discharges incidental to normal operation of a vessel
3 by 2008, which is pretty soon. And that it's pretty clear
4 that there -- you know, unless all the appeals are done,
5 there won't be a regulation. So there's lots of room for
6 you all and State Lands and EPA to work together to start
7 this implementation process now, which will get at a lot
8 of what exotic species are actually pollutants under
9 303(d).

10 Thanks.

11 CHAIRPERSON DODUC: All right. With that, we
12 have a motion by Dr. Wolff.

13 MR. KARKOSKI: Can I say one more thing?

14 CHAIRPERSON DODUC: You have 15 seconds.

15 MR. KARKOSKI: Okay.

16 BOARD MEMBER WOLFF: I did ask him to respond.

17 CHAIRPERSON DODUC: Oh. Well, 20 seconds.

18 (Laughter.)

19 MR. KARKOSKI: Okay. So on the -- the fact
20 sheets actually do name those species. So the category is
21 generic. But the named ones are the ones that I
22 mentioned. So if you can put that -- the qualification
23 that you mentioned in terms of we're not expected to deal
24 with every single non-native species and control of those
25 I think is important. And especially if there's something

1 in the resolution that says the focus is really on aquatic
2 invasive species and not really on established
3 non-natives.

4 BOARD MEMBER WOLFF: Well, I'm open to that. But
5 I'm not certain that it works for Mr. Wilson or for EPA.

6 BOARD MEMBER BAGGETT: I would -- again, I would
7 figure out a way to say it, Craig.

8 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well,
9 let's see what we see.

10 BOARD MEMBER WOLFF: There are problems with
11 doing that. And I want to be fair to those who are much
12 more aware of those problems than myself.

13 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The way
14 we set this up, the information that we used to come up
15 with these listings was if we had a population of exotic
16 species and we could show that there was an impact on
17 native species, we listed this kind of a group, a general
18 group, not any specific one. I'm uncomfortable naming
19 these individual species on the list, because it was a
20 true weight of evidence, a big picture look at these
21 listings. And I frankly don't know what the unintended
22 consequences might be of doing what's recommended here.

23 But I think what we have now is very similar to
24 Region 2, and we know the consequence of those listings.
25 And so I think the consequence will be the same.

1 BOARD MEMBER BAGGETT: I'm confused. I thought
2 Region 5 just said you listed species.

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In our
4 documentation for the fact sheets, which is in the staff
5 report, it's -- we're not asking the Board to adopt the
6 staff report. It's just the documentation.

7 BOARD MEMBER BAGGETT: Well, then that's a
8 clarification Region 5's asking for. The resolution
9 doesn't mention the species. It just mentions it as a
10 generic -- Okay. Then I think that satisfies Region 5's
11 concern. It doesn't have extended --

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'm not
13 sure that it does exactly.

14 BOARD MEMBER WOLFF: No, Region 5 was asking that
15 we not list for exotic species. We list for the specific
16 species that are listed in fact sheet. Our staff is
17 saying, no, that's unintended consequences. EPA has said
18 the same. I don't think going down that road is useful.

19 But I did appreciate the comment from Ms. Sheehan
20 that in helping the Central Valley Board to deal with
21 this, that the -- the lawsuits involved, which I was not
22 familiar with at all, in essence, say that there's a
23 pollutant if it's impairing beneficial uses. So the fact
24 something is exotic in and of itself doesn't mean that
25 it's being listed here today. We were listing the exotics

1 which impair beneficial uses. That should help you to
2 focus your efforts as you move forward.

3 CHAIRPERSON DODUC: All right. With that, a
4 motion has been made by Dr. Wolff to approve the listing
5 in the Central Valley Regional watershed area, with the
6 changes suggested by staff today, with the addition
7 listing of the Sacramento River, Feather River, and
8 Morrison Creek for Diazinon.

9 Did I capture that right?

10 BOARD MEMBER BAGGETT: And I seconded it.

11 CHAIRPERSON DODUC: And it's been seconded my Mr.
12 Baggett.

13 CHIEF COUNSEL LAUFFER: Madam Chair. Michael
14 Lauffer, Chief Counsel. I just want to be clear that this
15 motion isn't to adopt the resolution, because there's one
16 resolution before the Board at this point. This is
17 essentially an intermediate motion that at the end of the
18 day --

19 CHAIRPERSON DODUC: Fine, fine. Whatever.

20 (Laughter.)

21 BOARD MEMBER BAGGETT: We're going around in
22 circles.

23 CHIEF COUNSEL LAUFFER: And as long as you make
24 it legal --

25 CHAIRPERSON DODUC: Don't you want to rewrite the

1 resolution as we go through every single region?

2 CHIEF COUNSEL LAUFFER: Nine times.

3 CHAIRPERSON DODUC: All right. With that, all in
4 favor?

5 (Ayes.)

6 CHAIRPERSON DODUC: Any opposed or abstain?

7 Hearing none, this interim motion is carried.

8 Thank you.

9 With that, I would ask anyone who has general
10 statements on the 303(d) list not specific to any
11 particular listing and any particular region to come up.

12 And I see two people, maybe more.

13 Please begin.

14 MR. BRADSHAW: Thank you, Madam Chair. David
15 Bradshaw, Imperial County, from the Imperial Irrigation
16 District. Thanks for the opportunity to comment.

17 I want to give support to comments already
18 submitted, so I won't read the pages and pages that were
19 submitted. But it's referring to an October 17th letter
20 from the Colorado River Board. And the Imperial
21 Irrigation District would support that letter.

22 CHAIRPERSON DODUC: I'm sorry. Are you speaking
23 to a specific listing to a specific region?

24 MR. BRADSHAW: Sure. I'll get there.

25 Region 7.

1 CHAIRPERSON DODUC: Actually I'm not on Region 7
2 yet.

3 MR. BRADSHAW: Oh, that's right. We're still on
4 5.

5 CHAIRPERSON DODUC: No, we're done with 5.
6 General statements not specific to any region.

7 MR. BRADSHAW: Okay. Pardon me.

8 CHAIRPERSON DODUC: Thank you.

9 I'm going to try to work my way through the
10 regions. We've just finished 5. We'll go to 4 next, work
11 our way through.

12 So, Mr. Watson, I assume you have a general
13 statement.

14 MR. WATSON: Yes, Chair Doduc. I have a mixed
15 statement, but I will try to eliminate the one that's
16 specific and ask someone else to do that as soon as they
17 bring up the PowerPoint, if they would.

18 (Thereupon an overhead presentation was
19 Presented as follows.)

20 MR. WATSON: First I would like to --

21 CHAIRPERSON DODUC: I'm going to ask you to
22 please limit your statement to three minutes.

23 MR. WATSON: Yes. First I'd like to agree with
24 Alexis Strauss that Craig and his team have done an
25 extraordinary job working on this. And I think overall

1 implementation plan that's been incorporated into a basin
2 plan.

3 So this is really a policy question: What
4 happens with a delisting? And this may be something that
5 you have to address from a policy point of view.

6 --o0o--

7 MR. WATSON: The next issue -- in Craig's report
8 he suggested that he had left certain items to the
9 regional boards to consider, certain of these historic
10 listings that were either based on potential rather than
11 probable future uses or that were conditions.

12 And I'm suggesting that the regional boards
13 generally have not done this at the beginning of the TMDL
14 process. And I would like you to actually direct staff to
15 find the additional ones and remove them.

16 --o0o--

17 MR. WATSON: Point of clarification. And this
18 also relates to the TMDLs. There were some instances
19 where staff said by adopting a TMDL the regional boards
20 confirm that there's a problem. And I don't think that's
21 necessarily the case. What they confirmed is there was a
22 listing. And some of those listings may in fact have been
23 erroneous. And so just the fact that something's been in
24 a TMDL should not be the primary justification for
25 continuing those combinations in the -- on the list or to

1 be listed.

2 And, lastly, I'd like to ask you to at a future
3 time amend your listing/delisting policy. Your current
4 Policy Item 6.3 says that after this list things are going
5 to go back to the regional boards. We would ask you to
6 continue with the centralized process. It's been much
7 improved since the State Board staff took it over.

8 There are problems, with interpretations, various
9 problems. But it has been so vastly improved that we'd
10 ask you to continue with this process and amend the order
11 at some appropriate time.

12 CHAIRPERSON DODUC: Thank you, Mr. Watson. And
13 amended by all the fun we're having today.

14 Mr. Wilson, any comments?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: On the
16 change to the assumption, it truly is a -- what's being
17 requested is a policy statement by the State Board. I was
18 trying to be factual. If the water's listed -- a TMDL's
19 being completed, it's in the basin plan. Its actions are
20 in place. They need to be implemented. The list has no
21 effect on any of that. And that was my one and only
22 intent. To do what was recommended expands that into
23 something that I'm not comfortable with saying in a staff
24 report.

25 CHAIRPERSON DODUC: Thank you.

1 Any other general statements?

2 Ms. Sheehan.

3 MS. SHEEHAN: Good afternoon. Linda Sheehan,
4 Coast Keeper Alliance. I'm also speaking on behalf of
5 NRDC.

6 My general statement is that we ask that you
7 adopt the list with these recommended additions that have
8 been put forth by EPA and in the sheets today as well as
9 the additions that are in Heal the Bay's letter with
10 respect to beaches and Klamath sediment, Humboldt Bay
11 dioxin, and we'd like to see that Klamath algae as well,
12 but that's later.

13 Two very general points in addition to that, and
14 both are with respect to moving forward. One is in
15 response partly to Mr. Watson's comment with respect to
16 having a regional water board's maybe not take so much
17 part next time. That would require reopening a listing
18 guidance. And I was intimately involved with the
19 appropriation of a listing guidance, and Mr. Baggett can
20 testify to that, a 150-page comment letter that we
21 coordinated on the listing guidance.

22 And it's possible that we could reopen -- I could
23 ask for a reopening of the listing guidance. But perhaps
24 another suggestion might be for the Board to take a
25 lessons-learned approach. EPA raised a number of concerns

1 with respect to how the listing guidance was applied in
2 terms of perhaps transgressions with the Clean Water act
3 and standards. And we raised those on a number of our
4 letters. And I don't need to necessarily go into all of
5 them -- the weight of evidence approach, the narrative
6 standards, the binomial statistic approach, minimum sample
7 size, all of those were applied in ways to avoid listing
8 waters that needed to be listed.

9 And we need to step back as we start the 2008
10 process, which was now, and take a look at what are the
11 lessons learned and perhaps create some operational
12 guidelines based on those lessons learned for applying the
13 policy as we move forward, and particularly because the
14 regional water boards are required now to be involved and
15 must be involved in order for a proper public
16 representation to be had and perhaps lessen the burden at
17 the state level as well.

18 And one last point, with respect to moving
19 forward. In light of Agenda Item No. 8 today, compliance
20 schedules. It's just once we got them listed, I mean some
21 of these are -- you know, the TMDLs aren't set to be
22 finished for another 13 years. And at the rate we're
23 going, it will probably be longer than that. We've got
24 thousands to do. And in some of the compliance schedules,
25 for example, extend the deadline for complying with

1 standards until at least the TMDL's been adopted. That
2 could be decades before we'd even start looking at them in
3 permits.

4 So I think at a minimum we need to start
5 adjusting permits where we can to address impaired water
6 bodies. We need to revisit this -- the use of waivers for
7 discharges into impaired water bodies, look at using WDR,
8 look at the tools we have to start addressing issues now,
9 not wait until the TMDLs are adopted before taking any
10 action.

11 So thank you very much.

12 CHAIRPERSON DODUC: Thank you. Those are good
13 suggestions.

14 Mr. Howard.

15 CHIEF DEPUTY DIRECTOR HOWARD: A couple of quick
16 questions -- comments, that is. One on the question of
17 the regional board being involved in the listing. And
18 Linda said the guidance did indicate that. But, you know,
19 we are also in the process of putting out a solicitation
20 of data in which we would be stating that the regional
21 boards were going to evaluate the data first. And that's
22 going to go out in the next couple of weeks. If the Board
23 members have a different perspective on that, we'd like to
24 hear it as quickly as possible.

25 The issue of reevaluating the policy, one of the

1 things we committed to when the policy was adopted is that
2 after we use it once we will come back at a board meeting
3 to talk about lessons learned and what changes might be
4 appropriate in the policy, because, after all, we've now
5 taken it out for a spin and we've learned something about
6 how it works. And we still intend to do that. So that
7 will be coming to the Board in the next few months.

8 And just the other comment regarding the listing.
9 We have completed TMDLs for about 30 percent of the
10 listings. And we really didn't get rolling until about
11 2002, because we had -- you know, the fact that it took a
12 while -- we started in 1990. So it took us a few years to
13 pick, you know, the first TMDLs out. At the rate we're
14 going, you know, I don't think it's going to be as long as
15 people seem to think.

16 However, unfortunately if the Board acts today,
17 we're back down to about 22 percent, I think, or something
18 like that.

19 CHAIRPERSON DODUC: Thank you.

20 Mr. Wolff.

21 BOARD MEMBER WOLFF: I just want to confirm my
22 understanding of what's to occur in the next round. My
23 understanding essentially is that the method that has been
24 used by State Board staff this time is simply going to be
25 implemented at the regional level in the next round. And

1 then as that information comes up, the State Board staff
2 will check to make sure that that method was implemented
3 correctly. So this next round is not really going back to
4 the method or the approach that was used in the first
5 round, nor was it exactly like this round. It's something
6 in between, which I think is appropriate.

7 CHIEF DEPUTY DIRECTOR HOWARD: I think many of
8 the comments relate to the actual use of the policy. I
9 think the policy that was made provided a lot of clarity
10 to the process. The regional boards will still be
11 directed to use the policy. Our staff will work with them
12 through the listing process so that they understand how
13 we've done it and the way we expect them to do it. Then
14 after they've completed it, we will be checking it before
15 we bring it to the Board for approval.

16 BOARD MEMBER WOLFF: I'm perfectly comfortable
17 with it. And I think that really addresses Mr. Watson's
18 concern actually. I think perhaps he had the impression
19 that it was going to be sent back to the Boards to be
20 done -- regions to be done as it was done in the past.
21 Perhaps I'm misunderstanding him.

22 CHAIRPERSON DODUC: All right. Thank you.

23 If there are no other general statements, we'll
24 now -- oh, Dr. Gold. I know that you also had a
25 presentation relating to --

1 DR. GOLD: Right. I'm not sure how you'd like to
2 deal with it. And I'm also conscious of the fact that I'm
3 trying to get a flight on the other end.

4 But we have some statewide comments and we have
5 some regional board comments.

6 CHAIRPERSON DODUC: Then please do both, because
7 I will be moving to Region 4 next.

8 DR. GOLD: Great. Thank you.

9 So if I can get that -- thank you.

10 (Thereupon an overhead presentation was
11 Presented as follows.)

12 DR. GOLD: For the record, my name's Mark Gold,
13 Executive Director of the environmental group, Heal the
14 Bay. Hello again.

15 These comments are representing not only Heal the
16 Bay, but also the NRDC and the Santa Monica Baykeeper.

17 To start out with I just want to thank State
18 Water Board staff for their decision to list Compton Creek
19 for trash. We do probably more trash cleanups in this
20 state than probably just about anybody. And I can tell
21 you Compton Creek is about the most trashed water body
22 that we've seen definitely within the Los Angeles region.

23 Also we want to thank them for the addition of
24 DDT and PCBs for the Dominguez Channel, L.A. River
25 estuaries, and the Port of L.A. and Long Beach. Those

1 continue to be a problem. And so having them on the list
2 is very important.

3 Next slide.

4 --o0o--

5 DR. GOLD: So, the beaches, something we've
6 talked a lot about today. And just for background
7 purposes, Heal the Bay provided the data to your staff ten
8 months ago in our submission. It was quite a great deal
9 of data. I think it was brought up earlier by Board
10 Member Hoppin. I think that was probably the example, was
11 our letter.

12 And a couple of things. First on a local basis,
13 for Santa Monica Bay, Pico-Kenter Drain and Ashland Avenue
14 Drain we think were mistakenly removed from the list. And
15 we'll get to that in a second.

16 And then statewide, there are 45 beaches that are
17 not proposed for listing, despite meeting the listing
18 criteria that was approved by the State Water Resources
19 Control Board. And these are the same criteria that, as
20 you heard from Linda Sheehan, that were negotiated at
21 length in front of the State Water Resources Control Board
22 and for well over a year before that happened. As a
23 reminder, its 4 percent exceedances for AB 411. And then
24 binomial -- the binomial table that you're all too
25 familiar with at this point for the year-round data.

1 case. But the beaches -- as you can see, there are
2 beaches right in front of these storm drains that are --
3 that you have storm drain discharges that reach the shore.
4 The monitoring locations are actually in the surf zone.

5 We have major water quality problems at both
6 Pico-Kenter and Ashland Avenue. No one could look at this
7 data and make any other determination than saying it
8 should stay on the list. So it was more than a little bit
9 surprising to see that those actually came off the list.
10 So just to let you know on that. The beach monitoring
11 data of course justifies a listing.

12 Next.

13 --o0o--

14 DR. GOLD: Moving on to another issue that you've
15 heard a lot about already today with the Klamath River,
16 which is excess algal growth.

17 Right now we have a situation where algae is a
18 condition, not a pollutant, according to your staff. And
19 actually tell that to the fish and the degraded ecological
20 communities. It's a very severe impairment that's
21 occurring. Plus it's contrary to numerous court rulings
22 that have considered algae a pollutant if it actually
23 causes an impairment. I think the L.A. Times series, that
24 you probably all read, that it had two of the five
25 articles were actually on the impacts of algal impairment,

1 bringing out the case of how devastating this can be. And
2 I think you heard on the Klamath on some of the problems
3 as well.

4 Our own personal experience at Heal the Bay,
5 we've monitored algae in the Malibu Creek watershed for
6 over five years. We provided data to the state that
7 substantiates the impairment. Malibu Creek is still
8 listed for algae impairment, yet the Calleguas Creek is
9 not. Calleguas Creek has a great deal of data as well
10 that's been put together by the EPA as well as by local
11 universities as well as the Calleguas Creek watershed
12 representatives. The nutrient TMDL that was developed for
13 Calleguas Creek, I defy anyone in this room to say ten
14 milligrams per liter of nitrate is a number that anyone
15 would choose to actually deal with an algae impairment
16 issue. Yet that was the number that was chosen for the
17 TMDL.

18 So this supposition that if there's a TMDL in
19 place, that that's going to deal with the related problem
20 is completely fallacious when you look at that example.
21 Ten milligrams per liter, as you know, is stated more from
22 a drinking water number, which was a big concern on
23 Calleguas, not from the standpoint of the impacts on algae
24 and the ecology.

25 We bring this article right -- this photo right

1 here for you to look at. Right now, as you know, your
2 State Water Board staff has failed to actually come up
3 with what they consider algae impairment would be. We've
4 asked both the EPA as well as the State Board to make a
5 recommendation on this for the last three plus years.
6 They don't like the New Zealand data using 10 percent, 30
7 percent, whatever the case may be. But if you have creeks
8 that have 100 percent covered 100 percent of the days, is
9 that impaired? Right now we can't even get that
10 direction? And instead we're seeing delisting or no
11 listing decisions for algae, which is unfortunate.

12 Region 4 staff in their letter to the State Water
13 Board found that retention of algae listings support the
14 rationale that excessive algae can impair beneficial uses
15 and the algae is an appropriate constituent for inclusion
16 on the 303(d) list. So that's the recommendation of staff
17 that was provided to you from the regional board in the
18 letter.

19 BOARD MEMBER BAGGETT: Are these -- Mark, are
20 these also listed for nutrients?

21 DR. GOLD: Yes.

22 BOARD MEMBER BAGGETT: And they're listed for all
23 the underlying causes of -- causing algal blooms?

24 DR. GOLD: No, because you can have algal blooms,
25 yes, because of nutrients, believing the numbers that are

1 being developed aren't -- like I said, I gave you the ten
2 milligram per liter for Calleguas, which is not related to
3 algal bloom causing. You'd be looking at numbers way
4 lower than that. You'd also be looking at phosphorus as
5 well.

6 BOARD MEMBER BAGGETT: Correct.

7 You'd also be looking at temperature. You'd also
8 be looking at other issues.

9 BOARD MEMBER BAGGETT: So my question is: Are
10 any of these creeks proposed for delisting, those water
11 bodies? Are they listed for all those constituents,
12 phosphorus, not nutrients, temperature?

13 DR. GOLD: No, usually nitrate would be -- or
14 nitrogen was the only thing that would be listed. It
15 depends on the water body. I'm saying for Calleguas
16 itself you do not have a phosphate listing. So you're
17 never going to get at the algae problem if you're just
18 dealing with nitrate at ten milligrams per liter. It's
19 basically a complete failure.

20 BOARD MEMBER BAGGETT: Right.

21 BOARD MEMBER WOLFF: We have a nutrient listing
22 though for it. Is the TMDL being adopted already? What's
23 the ten milligrams per liter? Is it an adopted --

24 DR. GOLD: It's in their adopted TMDL for
25 Calleguas Creek.

1 BOARD MEMBER WOLFF: With a target of ten
2 milligrams per liter?

3 DR. GOLD: Correct. So the waste load allocation
4 as well is ten milligram per liter.

5 Okay. Well, moving along to exotic species.

6 --o0o--

7 DR. GOLD: All right. So this example, the
8 Malibu Santa Monica Mountains and Simi Hills. Some
9 examples of exotic species' problems that we have within
10 those areas are the New Zealand Mudsnaill, Carp, Largemouth
11 bass, Green sunfish Bluegill, Mosquito fish, Black
12 bullhead, Red swamp crayfish, and Bullfrogs.

13 And I can tell you in particular the mudsnail and
14 the crayfish are causing devastating impacts on the
15 ecology. And in this case we provided again a substantial
16 amount of data. And, again, we did not get a staff
17 response to that data.

18 Next slide.

19 --o0o--

20 DR. GOLD: To give you an idea of how big an
21 issue this is, this is a sign that is now posted at forty
22 different locations within the Malibu Creek watershed.
23 The New Zealand Mudsnaill has completely taken over the
24 main stem of Malibu Creek. And because of that, we're
25 basically telling everybody to stay out of the water for

1 impairment. And what we did, again using best available
2 science, working with Harrington and Fish and Game, was
3 we've done an extensive amount of work within the
4 watershed on the index of biological integrity, the IBI.
5 And what these examples are right here are severely
6 degraded communities for macro-invertebrates at a number
7 of different sites within the watershed. And basically we
8 can't seem to get an answer on this either as to why IBI
9 information is basically not something that's being used
10 to make determinations on biological community impairment.
11 It doesn't really make much sense in light of the fact
12 that, in essence, this sort of information has been the
13 key decision-making tool on 301(h) waivers for the last 20
14 plus years. Yet for some -- and so that's for full
15 secondary treatment discharges to the ocean. But yet when
16 we start applying it to the creeks using state methods,
17 using actually Tim Harrington, the most respected person
18 in this field in the State of California, the data is not
19 actually being used to make the determination on
20 impairment.

21 And, again, clearly all the other water quality
22 problems that we have, as well as the algae impairment, as
23 well as the sediment impairment that we have within that
24 watershed, and now the exotic species, that's why you end
25 up seeing something like this as an outcome.

1 Just to finish up, next.

2 --o0o--

3 DR. GOLD: Do you have any idea of the extent --
4 I won't go through this -- but the extent -- this is a
5 list of the beaches that meet the criteria. Some of them
6 are actually quite notorious for water quality problems.
7 And so it's a pretty amazing list to see that they're not
8 actually on there. A lot of them have gotten F's on their
9 report cards. Some of them are getting -- major projects
10 getting done on the Clean Beach Initiative. But somehow
11 they don't quite pass muster to be listed as impaired on
12 the 303(d) list.

13 Next slide.

14 --o0o--

15 DR. GOLD: Again more detailed than I'm going to
16 get into. But these are the extensive data and multiple
17 lines of evidence demonstrating the areas that have major
18 excess algal growth problems. And, again, not listed on
19 the 303(d) list, again with substantial information.

20 And the next slide.

21 --o0o--

22 DR. GOLD: These are some of the areas that are
23 impaired by exotic species within the Malibu Creek
24 watershed and beyond. And then that continues on the
25 next --

1 --o0o--

2 DR. GOLD: -- with biological communities
3 impairment.

4 The next one.

5 --o0o--

6 DR. GOLD: So there's a lot of data out there
7 that demonstrate that it's an impairment. We submitted
8 everything in a timely manner. We made it clear for staff
9 to look at. Yet it appears that the vast majority of the
10 data that I've just recapped here today was not used to
11 make a determination. Or if it was, we certainly weren't
12 given a good reason as to why, for example, the beaches
13 weren't listed as impaired on this latest 303(d) list.

14 Thank you for the opportunity to comment.

15 CHAIRPERSON DODUC: Mr. Hoppin.

16 BOARD MEMBER HOPPIN: I assume, given the list
17 you've just given us, this plane you're hopeful of
18 catching to southern California would be the red-eye
19 special?

20 (Laughter.)

21 BOARD MEMBER HOPPIN: You know, you -- I did read
22 your comment letter. And you are -- you know, I have
23 report card here too. You are -- while you were on time,
24 this letter was received on the 20th. And I realize this
25 has been an ongoing process. But you have to realize that

1 my colleague, Dr. Wolff, and I are short-timers. So some
2 of these issues were initiated, you know, prior to our
3 tenure on the Board.

4 When I did read your comments, given your
5 organization's involvement in the Clean Beach Task Force,
6 given the fact that in many cases our staff defers to your
7 clean beach report card gives you an extraordinary amount
8 of credibility on this subject, quite frankly. So before
9 I got to the snails and a lot of these other things I
10 spent time asking staff why in fact the 45 beaches that
11 you were concerned about were not listed.

12 And while Mr. Wilson's here, while you're at the
13 podium, I would like to discuss their view on this as well
14 as yours and see if we can come to some resolution of this
15 issue without any perception of giving anyone special
16 consideration on anything.

17 So if you would, Mr. Wilson, would you please
18 address in your views why these beaches, while may be
19 qualifying, were not listed in this session?

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: This is
21 an overwhelming task to develop a 303(d) list, and all
22 data and information need to be considered. And I really
23 hear Mark, I really hear Mr. Gold, his comments. And if I
24 had my druthers, we would have evaluated every bit of
25 information that was out there, developed fact sheets, and

1 come to a conclusion.

2 We went through -- very carefully through the
3 listings that we have. We came up with a factual basis
4 for these listings. And we had to set priorities. We had
5 to have reasons -- we established reasons for evaluating
6 what we could evaluate in the time that was available to
7 us.

8 I love evaluating this data. I think it's very
9 meaningful. I think it moves the ball in our programs,
10 like the TMDL program.

11 Essentially we ran out of time. We had to bring
12 this forward. I think -- you know, there's a couple of
13 options for the Water Board. You can defer this till next
14 time. You could ask EPA to continue this, as they've
15 already offered to adopt this. Or you could direct us to
16 evaluate this information in some period of time and come
17 back to you with more recommendations for listing.

18 BOARD MEMBER HOPPIN: If we gave you, say, six
19 months to complete your evaluation, would we be creating a
20 situation where every person that could articulate their
21 issues that weren't addressed in the future would come up
22 and say, "Hey, back in the 28th of October you folks gave
23 special consideration to Dr. Gold's concerns of these 48
24 beaches"? Or would it be legitimate to say that the
25 decision was delayed simply by virtue of the overwhelming

1 amount of material that you needed to digest that was in
2 fact submitted on a timely basis?

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I think
4 others would come forward and request additional time,
5 additional review. But in these cases, I think these are
6 important listings. I think you could limit this to these
7 issues so we could get this done.

8 DR. GOLD: With all due respect, we used your
9 listing criteria and on all the data that's readily
10 available and we did it in less than a week. So I mean
11 it's not -- I understand some of these other issues that
12 we're talking about are a lot more complex. But the way
13 the listing criteria was set up or -- I mean you're
14 looking at percentages and you're running the data through
15 it. This is not a complex analysis.

16 BOARD MEMBER HOPPIN: Mr. Wilson.

17 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The
18 analysis is part of the assessment. On average, it took
19 us 11 hours to do the analysis on -- for these fact
20 sheets. We have 2300 or so. On average it took us about
21 11 hours per fact sheet. That includes analyzing the
22 data, writing the report, getting several reviews of the
23 staff, working it through our management review. It's not
24 just evaluating the data and putting it into a table. And
25 I have to make sure that these listing criteria are used

1 appropriately.

2 Many of these water bodies, it's easy to slice
3 and dice or -- some information together to come to -- you
4 can come to whatever conclusion you want, depending on how
5 you slice up this data. So you have to take a thoughtful,
6 careful approach. And Mark always does take that
7 approach. But it's not a trivial effort to do this. It
8 has not been one.

9 BOARD MEMBER WOLFF: Are you suggesting we take
10 11 hours times 45?

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It's
12 going to take me probably -- It's probably going to take
13 me a month and a half to get it together. The first thing
14 I have to do if you adopt this list today is finish off
15 this process. And that's going to take about a month.
16 And then we'll go into a possess where we'll review this
17 new data. It's going to take a certain period of time.
18 Then we put it out for review, like we always do, public
19 review, and then it comes back to the Board. I think, you
20 know, a six-month period is reasonable.

21 BOARD MEMBER HOPPIN: You know, clearly we have a
22 difficult time granting a listing before we've had some
23 material reviewed. I would suggest that possibly we allow
24 a six-month extension on these 45 beaches so you don't get
25 thrown into the next cycle, which is going to take a lot

1 longer than that.

2 DR. GOLD: I mean I think frankly that maybe the
3 public health has a better shot at getting protected
4 through the EPA and their process. I mean I hate to sound
5 that cynical. But, you know, they're going to get through
6 this a lot quicker than clearly Craig's staff's going to
7 get it. I just -- we're very frustrated, Heal the Bay,
8 from the standpoint of -- it is the most public database
9 that there is for water quality in the State of
10 California. We share that data with you on a regular
11 basis. This is not something that you got October 20th.
12 This is something that you got ten months ago. And it's
13 one of the most public high profile issues that clearly is
14 a big priority for the Governor. He's going around the
15 state today talking about how we need Prop 84 to clean up
16 our beaches. And, yet, here we are. It just -- it
17 doesn't make sense in light of what a high priority this
18 has been, clean beaches, for the State of California. And
19 you heard all that great news this morning on the Clean
20 Beach Initiative. But here we are on a listing process
21 and we're doing a half-assed job. It's very
22 disappointing.

23 Thank you.

24 CHAIRPERSON DODUC: Dr. Wolff.

25 BOARD MEMBER WOLFF: May I ask staff -- that's

1 all right. Finish your consultation if you need to.

2 CHIEF DEPUTY DIRECTOR HOWARD: Go ahead.

3 BOARD MEMBER WOLFF: What about this option of
4 doing something with EPA, so that EPA evaluates this data
5 at the time between, you know, our adoption of the list
6 presumably and finalization? But with respect to these 45
7 beaches or whatever number we choose, you know, we
8 would -- it's not quite delegate to them, because they
9 have independent authority. But do I understand correctly
10 that they could take care of it and we would probably be
11 comfortable with that?

12 CHIEF DEPUTY DIRECTOR HOWARD: Yes. EPA will
13 look at this data in any event. So, you know, they will
14 make an independent judgment of everything that this Board
15 has done and all the information that was sent to us,
16 regardless of the level of review that we gave it. We
17 will send that to U.S. EPA as well. And, in fact, we can
18 work with U.S. EPA, to have Craig's staff work with them
19 to make sure that the data's in the condition that we both
20 agree to and that, you know, at least have our own input
21 and EPA's analysis of the data.

22 BOARD MEMBER WOLFF: And how long does it take
23 EPA to consider our recommendation before they make their
24 recommendation?

25 CHIEF DEPUTY DIRECTOR HOWARD: Well, we have

1 Alexis here, so she might be able to give her timeline.

2 BOARD MEMBER WOLFF: That would be great if
3 she's...

4 MS. STRAUSS: I think the answer to your question
5 is three to four months is typical for a list of this
6 size. In our smaller states we can turn this around more
7 rapidly. But given the nature of this record and the
8 nature of the complexity of some of these issues, I think,
9 including our own comment period, I'm looking at three to
10 four months, and making sure that we are very clear where
11 we have an exceedance of state-established standards.

12 BOARD MEMBER WOLFF: Are you prepared or do you
13 have adequate staff to address this concern? I mean, you
14 know, there's a difference between reviewing the whole
15 packet, which you have to do, and putting some focused
16 attention into a particular subset of questionable
17 decisions on our part.

18 MS. STRAUSS: Well, I think that our folks and
19 Craig and his team have been working together for years on
20 this package. And so this process is more than the
21 two-year process it appears to be. We've been working
22 together and giving a great deal of time to this
23 particular listing cycle. It's been about a
24 four-to-five-year process. So there's a great deal of
25 information in the record that is not new. And therefore

1 I think our fine tuning of this per the comments we
2 send -- have sent you just reflect some fine tuning of the
3 list and is 99 percent in agreement.

4 For example, this information on the pathogen
5 dilemma, we need to look at where we have standards
6 exceedances and what that means. Procedurally we can
7 handle it if you can't. But it doesn't -- I'm not
8 standing here to say I am going to list X. I'm just
9 saying procedurally we can do it in a three-to-four-month
10 time without too much process.

11 BOARD MEMBER WOLFF: I appreciate that. And I
12 think you're telling me that we can and perhaps should
13 trust you to figure this one out in the next three to four
14 months; we don't need to delay the overall decision for
15 six months; this can be addressed as a normal process on
16 roles. Is that fair or am I putting words in your mouth?

17 MS. STRAUSS: No, you're not at all. I think
18 that we would be working together with this group of folks
19 and that they could give you one-on-one updates over the
20 next few months as to how that is turning out. I think it
21 might be given that we all have very limited amount of
22 staff and a number of things to do. It might overall --
23 if we combine our resources this way, it might be a more
24 efficient use of the resources at hand if that's what the
25 Board wishes to do.

1 CHIEF DEPUTY DIRECTOR HOWARD: And we would
2 combine our resources with U.S. EPA to make this happen as
3 quickly as possible.

4 BOARD MEMBER BAGGETT: I guess I would propose a
5 slightly different twist then. Why don't we in the
6 resolution recommend that U.S. EPA look at these specific
7 beaches and be -- to work with us on it. I mean just put
8 it in the resolution, so we don't adopt but we recommend.
9 We say, "Here's the data. We ran out of time. But we
10 recommend" -- "we think there's merit to spending time on
11 this." So at least it puts us in -- I think as Mark said,
12 it puts us in a position of recognizing we do have a
13 problem, we have spent a lot of money on a lot of these
14 beaches, they are a high priority for this Governor and
15 for this Board. And I think it's a different -- rather
16 than sort of hunting and say, "We hope you take care of
17 it," we say, "We think you should really look at these.
18 Here's the data. We'll help you. But we just ran out of
19 time."

20 MS. STRAUSS: I think that as we work through
21 this process, if there are ones that we choose to list and
22 ones that we don't choose to list, that there would be a
23 good process for working with the commenters and with you
24 so that you would understand that set of decisions as we
25 go into our own public comment period.

1 BOARD MEMBER BAGGETT: It's just more of an
2 affirmative statement than just sort of "here".

3 Is my --

4 BOARD MEMBER WOLFF: No, I agree with you
5 completely. I would have wanted to do it that way. I
6 agree completely.

7 But it's with respect to the beaches issue we
8 need to talk about algae and exotic species separately. I
9 mean I'm not suggesting that you'd have to do that with
10 respect to -- or algae or exotic species. We need to talk
11 about those.

12 CHAIRPERSON DODUC: I think we've wrapped up the
13 beaches discussion.

14 Any other speakers? I'm sure they have other
15 speakers from the L.A. Basin.

16 Please, come on up.

17 MR. GREENE: All right. Well, I'll just go ahead
18 and start. My name is Jerry Greene. I'm a senior civil
19 engineer with the City of Downey. I'm here representing
20 the Executive Advisory Committee of the Los Angeles County
21 permittees.

22 Again, I want to acknowledge the heavy work that
23 was done by all the Board staff.

24 I would also like to start out by commenting
25 that -- and we are in support of the comments that were

1 prepared by L.A. County Sanitation Districts, in
2 particular those with regards to in the L.A. River which
3 at this point is being done at least by the agreement. We
4 also are concerned though about the remaining of lead in
5 the San Gabriel River Reach No. 2, which we think the San
6 District has developed some excellent data to suggest it
7 should be delisted.

8 In addition, we also want to support the staff's
9 decision not to list Coyote Creek for nitrate, not to list
10 the L.A. River -- I got out the aluminum -- excuse me --
11 and San Gabriel River Reach 3 for delisting on toxicity.
12 We would like to encourage the Board to look at the
13 listing for toxicity on Walnut Creek.

14 Also, supporting Burbank in regards to cadmium
15 delistings. They've done a heck of a lot of data
16 analyses. They've taken many, many samples. Roughly a
17 year or so ago we were here discussing the L.A. River
18 metals TMDL. And at that time they were told that, you
19 know, bring the data forward. And if it's not listed, it
20 will be part of the TMDL.

21 It seems like we're going into a circle or
22 circular situation where, because there's a TMDL, we end
23 up with listings for things because there exist TMDLs.

24 In fact, that was one of the most common
25 complaints I had recently in speaking with other cities on

1 this 303(d) list from our area, is it seemed like in many
2 cases we were seeing things that essentially said, because
3 there's an existing TMDL, the listing should continue on.
4 As an example, south Santa Monica Bay beaches, many of
5 which do not have the impairments but which are still
6 showing up in the list just because it's a larger TMDL.
7 The TMDL looks at a large number, a large area of beaches.

8 I'd like to commend the staff on their decision
9 to move away from physical characteristics such as just
10 straight toxicity, and trying to focus more on definable
11 pollutant issues, more of a problem.

12 That also goes with algae though. Algae is,
13 frankly, an organism that is, like all organisms, wanting
14 to take advantage of the situation. If it can find a
15 place to live, it will do so. I can understand some of
16 the assertions made that we need to better find out what
17 the source is that's causing the algae to be there,
18 whether it be phosphorus, nitrogen, et cetera, but to just
19 list for algae is not helpful to us.

20 Let's see. Boy, I was going to take a different
21 path. Anyway -- oh, 303(d) -- I'll just let it go at
22 that.

23 Thank you very much. And we appreciate your
24 staff's time in putting this together.

25 CHAIRPERSON DODUC: Thank you very much.

1 Questions, comments?

2 Next please.

3 MS. GREEN: Good afternoon, Madam Chairman
4 Doduc and -- Chair Madam Doduc -- excuse me -- and members
5 of the Board. I'm Sharon Green with L.A. County
6 Sanitation Districts.

7 We have just a very few slides today.

8 I have with me today Beth Bax, who's a senior
9 engineer at the districts, who's worked on our comments on
10 the list and has prepared a lot of the data review.

11 (Thereupon an overhead presentation was
12 Presented as follows.)

13 MS. GREEN: Just in summary -- oops.

14 Okay. There we go.

15 The summary really of several of our comments.
16 As many people have stated, we also greatly appreciate the
17 hard work of the staff and the amazing staff report
18 really, to think of what has been produced here and how
19 well documented things are. It's an understatement to say
20 it's night and day from processes that some of us, like
21 myself, worked on in the 1990s. I mean I've been
22 commenting on these since the mid 1990s, and there was
23 almost no documentation back in the first couple of rounds
24 of doing 303(d) lists. Not to mention there was very
25 little public process. So we really appreciate the

1 of the Santa Clara River watershed.

2 The green portion shows where salt-sensitive
3 crops are grown in the watershed.

4 This letters represent different water segments
5 that have different listings for salt-related compounds.
6 Some of them are existing listings. Some of them are
7 newly proposed -- two or three of them are newly proposed.

8 All in all, in the watershed, 14 listings.

9 Two of them have a TMDL that has been adopted by
10 the regional board back in 2004. It was recently
11 modified. Has not come before you yet for those
12 modifications.

13 But the other listings have not been addressed,
14 with the one exception of the Reach 3 chloride, which EPA
15 established a TMDL for in 2003. However, to our knowledge
16 that's never been implemented because it was an
17 EPA-established TMDL. The regional board has never
18 developed an implementation plan.

19 What we want to ask you to do is to give the
20 chance for our watershed approach and to really encourage
21 the regional board to put these all together into a
22 regional TMDL for all the salt-related listings in the
23 watershed. Since the beneficial use being impacted is in
24 the downstream portion, it seems strange to us that those
25 are not being prioritized and done now when the other

1 parts with the other TMDL for chloride in the upper part
2 of the watershed's being implemented.

3 So I'm going to stop now and let Beth talk about
4 the other few comments we have.

5 MS. BAX: Hi. I don't know how to use these. I
6 don't want to start spitting out or anything.

7 --o0o--

8 MS. BAX: I'm Beth Bax. I am a senior engineer
9 at the Sanitation Districts. I've worked there for six
10 years. I'm intimate with all the data that Craig's
11 already mentioned.

12 You know, we did put in these six comments this
13 October, yes, five days ago. And it's really interesting,
14 because I think they're all equally valid, and Craig
15 agrees with us on two of them, and he expects me to be
16 happy.

17 (Laughter.)

18 MS. BAX: And he did tell me earlier that he read
19 every single word of my comments. So I'm just going to
20 highlight three of them really quick and tell you why
21 they're important. It's obviously not the first two that
22 Craig has already agreed with us on.

23 For lead in San Gabriel Reach 2 -- River Reach 2.
24 The objective is attained. I sent this data in January
25 2006. So the data has been available. It's been before

1 the State Board staff. And basically it shows there's
2 attainment of the lead standard.

3 And why that is important is that there's a TMDL
4 that has been approved in July at our regional level that
5 will come before you this fall. And I'll probably be back
6 here again. And why it's important is that there is no
7 other listing for wet weather for the San Gabriel River.
8 So that means that 18 cities had to put in BMPs, probably
9 spent millions of dollars to try to attain a standard
10 which is already attained. So I sent this data in again.
11 Even though Craig keeps telling me not to, I keep doing
12 it.

13 The Santa Clara River Reach 7 is kind of -- it's
14 kind of an interesting listing. On September 2005, it
15 wasn't proposed. And there's been no data put forward
16 about why this is impaired. But on this listing round, on
17 this -- on September 2006 proposed listing, they popped
18 up. And in my infinite knowledge what I think the problem
19 is is that the regional board and EPA have in the past had
20 two different numbering systems for San Clara River Reach
21 7, and I think it's a mistake. And originally it was
22 proposed to be put on the list for listings being
23 addressed by TMDLs. And I provided comments to the state,
24 saying, "Look, there are two adopted TMDLs U.S. EPA
25 approved and they don't address Reach 7."

1 So now, it's a -- in the -- sorry, Craig -- in
2 the State Board's infinite wisdom, these listings have
3 been put on the list of not yet being addressed by TMDLs.
4 Well, there's no data that's been put forward that shows
5 there's any impairment. And we actually, the districts,
6 maintain our state water station at Reach 7. And I did
7 send in the data, you know, five days ago. I'm guilty.
8 But being as how these were never in the September 2005
9 list packet, they were never out there before, so, yeah, I
10 send in the data. And there's no violation. We've only
11 taken 10 measurements over the last 15 years because this
12 water body is normally dry.

13 So it's like, okay, so now we're -- my fear is
14 that it will push forward another TMDL. My fear is that
15 if we leave it on a list for two years, no one will think
16 it's a mistake that it's there. And in two years or in
17 three weeks, whenever the solicitation begins, we have to
18 start the mass mailings again to Craig.

19 And Walnut Creek toxicity, again, the reason why
20 it is important and why you can't leave it on the list for
21 two more years is that there's a TMDL on the consent
22 decree that is due in March 2007. And this is the last
23 listing that's on the consent decree for the watershed
24 and -- excuse me -- the last listing that's on -- you
25 know, that is pushing the consent decree. And there's

1 actually agreement between, you know, the sanitation
2 districts and EPA and other people that the water body is
3 actually -- it's meeting the objective for toxicity. So
4 we're just asking for it to be delisted.

5 But as Sharon says, we do agree with 99 percent
6 of the list. And we're very thankful to Craig and we will
7 be sending you a fruit basket.

8 (Laughter.)

9 CHAIRPERSON DODUC: Thank you.

10 Let me ask Mr. Wilson to please respond.

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, we
12 are in agreement on aluminum in the L.A. River Reach 1 and
13 in nitrite in Coyote Creek. That's a good thing.

14 On the chloride and nitrite for Santa Clara River
15 Reach 7, we inappropriately identified that as being
16 addressed by a TMDL. We did not review any of the
17 foundation data. We just wanted to move it to that being
18 addressed portion of the list.

19 The regional board --

20 CHAIRPERSON DODUC: So it was listed prior to
21 this listing?

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
23 correct.

24 CHAIRPERSON DODUC: No, no. I'm just hearing --
25 I'm seeing shaking of the head.

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We moved
2 it from the list to the being addressed part. That's all
3 we did. And my recommendation now is to move it back to
4 the list. I think we need to take a careful look at it.
5 I love talking to Beth. She's very convincing. I need to
6 look at the data and check it out to make sure it -- it
7 either satisfies the listing -- or the delisting
8 requirements or not, and I need to look at that. And I am
9 not there yet.

10 On the lead in San Diego River Reach 2, this is
11 an extremely close call. It's the difference between one
12 or two hits in the data set. We made an assessment of the
13 data. We said keep it on the list. We talked on the
14 phone; there was an agreement that we would leave it on
15 the list. We got a further analysis by the San Districts,
16 you know, remove some of the data points.

17 This is a very difficult one. I'm standing by
18 the assessment that was made by my staff. I think we made
19 it correctly. I don't want to end the debate over this,
20 because we need to discuss these things vigorously to make
21 sure we're absolutely doing the right thing.

22 I'm not in agreement on removing any more of
23 these hits from the data set.

24 That's my conclusion on this particular one. And
25 I think we need to leave this on the 303(d) list and deal

1 with that as part of the TMDL.

2 BOARD MEMBER WOLFF: Did you speak to toxicity,
3 Walnut Creek --

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well,
5 toxicity is brand new data. This is that October 5th,
6 2006, report that just showed up Friday. And, quite
7 frankly, I -- you know, I've read it once. It says
8 delist. I think this is going to be addressed again
9 through this process with U.S. EPA as they get into this.
10 And I will definitely work with their staff to analyze
11 this information as part of that process. But I just
12 haven't had a chance to get to thoroughly.

13 CHAIRPERSON DODUC: All right. Our court
14 reporter is dying and I think may need a break.

15 Let's take a ten-minute break. Is that adequate?

16 And we will resume at -- oh, my gosh, 4:25.

17 (Thereupon a recess was taken.)

18 CHAIRPERSON DODUC: Will the next speaker please
19 step up. We're still on the Los Angeles Basin.

20 MS. COFFEE: Good afternoon, almost evening. I'm
21 MaryLynn Coffee from Nossaman, Guthner, Knox, and Elliott
22 on behalf of Newhall Land and Farming.

23 We too appreciate the tremendous amount of work
24 that your staff has put into the listing process and the
25 clarity and great deal of clarification that proceeding

1 under the state listing policy has lent the process in
2 general.

3 We really just have a question this afternoon,
4 and it really builds upon the question raised by the San
5 Districts prior to ours. And, that is, that we would just
6 like an explanation and a clarification in the record as
7 to why the Santa Clara River Reach 7 is proposed for
8 listing for chloride, nitrite, and nitrate. It's our
9 understanding that Regional Board Reach 7 has never been
10 listed for these pollutants in the past.

11 And while Regional Board Reach 5 has been on the
12 list and is now being proposed to be one of those
13 already-listed-being-addressed types of listings, as far
14 as we can tell Reach 7 has not been on the list. And
15 there may be a confusion, because EPA has had for years
16 different reach numbers and for years EPA called -- what
17 the regional board refers to as Reach 5, EPA called that
18 Reach 7. I think we could all agree that that area was
19 listed. But there is still some confusion as to why we'd
20 be proposing a new this listing for Reach 7. So if we
21 could get that clarified, that would be terrific.

22 CHAIRPERSON DODUC: Thank you.

23 MS. COFFEE: Thank you.

24 CHAIRPERSON DODUC: Mr. Wilson.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In the

1 past when we've made a mistake like this where we've done
2 something, we just want to go back to where we were. And
3 that's what we want to do now. I will establish this
4 listing -- or the listings the way they were in the '02
5 list. We thought we were pulling a listing and putting it
6 on that "being addressed" part of the 303(d) list. And we
7 did that incorrectly. And I'm going back to where we
8 started, nowhere else.

9 CHAIRPERSON DODUC: So the answer to the question
10 is that the Santa Clara River Reach 7 was listed in 2002
11 for chloride, nitrate, and nitrite, is that your answer?

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's my
13 answer.

14 CHAIRPERSON DODUC: In the draft that you
15 released for this year you mistakenly moved it to the
16 already address through a TMDL category and now you're
17 just moving it back to the way it was on the 2002 list?

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
19 correct, Ms. Doduc.

20 CHAIRPERSON DODUC: Thank you.

21 All right. Next speaker?

22 I see dwindling interest.

23 (Laughter.)

24 MS. SHEEHAN: Linda Sheehan, California Coast
25 Keeper Alliance.

1 Just a point of order. I wanted to comment on
2 the algae issue in support of Dr. Gold's comments. But
3 also whatever you decide on this directly impacts
4 obviously the Klamath algae issue, on which I definitely
5 wanted to speak. So perhaps I could kill two birds with
6 one stone.

7 CHAIRPERSON DODUC: Please go ahead.

8 MS. SHEEHAN: Okay, great. Thank you.

9 My understanding is that staff didn't list them
10 early because of this issue about toxic algae as a
11 condition, not a pollutant. And Dr. Gold spoke at length
12 with regard to some of the impairment issues. But I
13 wanted to reiterate some of the legal issues, that it's
14 not clear to me, you know, where the legal basis is, for
15 the Section 303(d) says if it's a pollutant, then you need
16 to list the water body that is impaired by the pollutant
17 for that pollutant.

18 Forty CFR 122.2 defines pollutants to include
19 biologic materials. And I know this particularly well
20 because this was something that I have debated back and
21 forth with with State Water staff for a number of years
22 with respect to invasive species. And that was part of
23 the TMDL litigation that was brought. And one last year
24 where the Court definitively said that invasive species
25 are biological materials and therefore need to be listed,

1 just like bacteria and viruses. And whether or not there
2 are other pollutants in the water body that may exacerbate
3 or enable the biological material to be there or not be
4 there has never been an issue with invasive species and
5 with bacteria and viruses.

6 Even though that is sort of the case, high
7 nitrogen content can create regrowth conditions for
8 bacteria that otherwise might die, certainly some
9 pollution issues are things that invasive species
10 particularly like, for example. But that doesn't come up
11 because it shouldn't come up. And so it shouldn't be an
12 issue here as to whether nitrogen or phosphorus or other
13 issues that, you know, sort of address the toxic algae --
14 that should not be a legal basis and is not a legal basis
15 for not listing it. It's a biological material, it's
16 impairing the waters. It could also be viewed as a
17 toxicant in this case, you know, just like a chemical
18 toxicant impairs beneficial uses. So in that case could
19 be listed in that regard as well.

20 So I would ask you to support -- I support Dr.
21 Gold's comments. I think that toxic algae listings for
22 Calleguas Creek, et cetera, should be included in Region 4
23 and for the same reasons as I'll more briefly state later.

24 The Klamath River should be listed for toxic
25 algae as well. It does not seem to be clear that there's

1 a legal basis for not including it.

2 Thank you.

3 CHAIRPERSON DODUC: Dr. Wolff.

4 BOARD MEMBER WOLFF: Let me ask you about a legal
5 basis. Who's discharging it?

6 MS. SHEEHAN: I'm sorry?

7 BOARD MEMBER WOLFF: In order to list a body we
8 need an impairment as a result of a discharge.

9 MS. SHEEHAN: Yeah. Well, and that would be
10 prior to TMDL process is to assess where the rate and
11 condition of the discharge is.

12 BOARD MEMBER WOLFF: But the algae's not being
13 discharged by anyone.

14 MS. SHEEHAN: Well --

15 BOARD MEMBER WOLFF: I mean this is essentially
16 the staff position, that there are nutrients or something
17 else that are being discharged. If we want to list, we
18 need to list for those. Algae is a condition, not a
19 pollutant that is being discharges. That's the legal
20 basis for not listing them.

21 MS. SHEEHAN: Well, yeah, I would respectfully
22 disagree that you necessarily need to have a definitive
23 discharge associated with a particular toxic algae the
24 biological material it issues. So, for example if you had
25 a bacterial regrowth situation, you may or may not have a

1 charge associated with that. And yet that's not been the
2 kind of thing, the kind of detail that we've gotten into
3 in the past. And whether the Board wants to or not, you
4 know, I would defer that for a later discussion.

5 But I would support the proposal to list for
6 toxic algae for that reason.

7 BOARD MEMBER WOLFF: I don't want to get into an
8 argument with you. But I'm looking for a discharge of
9 something, a total maximum daily load. We're talking
10 about discharges of things which overwhelm the
11 assimilative capacity of the receiving water body. What's
12 being -- you know, algae are not being discharged.
13 Something else is being discharged. So I'm failing to
14 understand your legal argument.

15 MS. SHEEHAN: Well, then in that case that would
16 be an implementation question if we were going to, for
17 example -- I'm just trying to address the issue of toxic
18 algae being addressed by nitrogen, which in case it isn't.
19 I mean nitrogen is being addressed by nitrogen. In this
20 case for Calleguas toxic algae is not being addressed by
21 ten milligrams per liter of nitrogen. So if there is a
22 discharger associated with the nitrogen, then perhaps we
23 can work that into the TMDL.

24 But the way -- you know, the way that it's
25 proposed right now is not working to address this

1 particular problem, which is a pollutant. So I'm not
2 certain how we would be able to go forward without listing
3 the water body as impaired and then addressing it through
4 the implementation process.

5 BOARD MEMBER WOLFF: Okay. Thank you.

6 BOARD MEMBER BAGGETT: What about -- Craig, what
7 about water heights? Have we listed the Central Valley
8 for water heights?

9 SENIOR ENVIRONMENTAL SCIENTIST WILSON: No.

10 BOARD MEMBER BAGGETT: I mean it just seems like
11 a slippery slope that would be -- unless you have a --
12 see, with the ballast water we had a discharge for those
13 invasive species. I think -- we've got algae -- red algae
14 in the South Coast. I mean we could -- I guess we could
15 start this all in my backyard, start this also.

16 SENIOR ENVIRONMENTAL SCIENTIST WILSON: A comment
17 on the algae --

18 BOARD MEMBER BAGGETT: I don't know where we'd
19 stop.

20 CHAIRPERSON DODUC: Mr. Wilson.

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: A comment
22 on the algae and the nutrient levels. You know, it's been
23 brought up that the ten milligrams per liter is a drinking
24 water number, and that's true. Ideally it would be
25 focused on aquatic life. The Water Board is developing

1 numerical nutrient endpoints for TMDLs. I've seen reports
2 where they have different numbers. These listings -- or
3 listings for nutrients to protect aquatic life, they're
4 going to be very low nitrogen numbers. That's just the
5 way it's going to play out.

6 The regional boards use that ten milligrams per
7 liter because that's a number that they have. And that's
8 going to improve the water quality in those water bodies
9 even though it's a drinking water number. I see it as an
10 interim step.

11 But listing the algae is -- it's not discharged.
12 It's a natural feature of all water bodies of the state.
13 And it's only bad when it's out of balance because of
14 these pollutants and other conditions in water bodies.

15 CHAIRPERSON DODUC: Thank you.

16 Mr. Levine, did you want to speak on Los Angeles
17 Basin issues?

18 MR. LEVINE: Yeah -- well, there was just a
19 question before the Board. Al Levine from Coast Action
20 Group.

21 If you read the Court's findings in Pronsolino
22 versus Nastri and before that Pronsolino versus Marcus
23 that supported that, all pollutants shall be listed
24 regardless of the source if they are causing an
25 impairment.

1 BOARD MEMBER WOLFF: All pollutants that are
2 being discharged regardless of the source.

3 MR. LEVINE: It doesn't say anything about
4 discharge. All pollutants that are causing impairment
5 where water quality standards aren't being met need to be
6 listed, according to the Court statement in those cases.

7 CHAIRPERSON DODUC: Mr. Blum.

8 STAFF COUNSEL BLUM: Based on my knowledge at the
9 moment, I would agree with Dr. Wolff. There has to be
10 some form of discharge or something like that. I'm not
11 prepared at this moment to give a definitive opinion.
12 However, my belief at this point is that there must be
13 some discharge that can be controlled.

14 CHAIRPERSON DODUC: Ms. Sheehan.

15 You're about to read something to us. I can
16 tell.

17 MS. SHEEHAN: Well, it just -- it doesn't --
18 yeah, I just wanted to clarify. It doesn't talk about
19 discharge in 303(d). It talks about whether or not
20 existing effluent limitations are sufficient in order to
21 meet water quality standards. And that was the issue in
22 Pronsolino, which reminded me --

23 CHAIRPERSON DODUC: Well, when you're talking
24 about effluent, you're talking about a discharge.

25 MS. SHEEHAN: Well, the issue in Pronsolino is

1 the practices -- you're right. A larger conversation.
2 But the issue in Pronsolino was, you know, you were not
3 irrigated, agriculture wasn't regulated under the Clean
4 Water Act, so there were no issue about the discharges.
5 And yet Pronsolino said that you needed to pull that in in
6 order to develop the loads. Whether you needed to
7 implement it or not was another question. So I think
8 perhaps, you know, it would merit some more discussion.

9 Thank you.

10 CHAIRPERSON DODUC: Perhaps the next round.

11 (Laughter.)

12 BOARD MEMBER BAGGETT: I would second that.

13 CHAIRPERSON DODUC: Any other comments on L.A.
14 Basin?

15 Seeing none.

16 What is the Board's pleasure? Discussion,
17 questions on L.A.'s --

18 BOARD MEMBER WOLFF: Is anyone here from the L.A.
19 Board staff here?

20 CHAIRPERSON DODUC: I don't have any cards from
21 L.A. Board staff.

22 BOARD MEMBER WOLFF: I wonder if State Board
23 staff can help us to understand what the L.A. Board is
24 doing with respect to algae and how listing or not listing
25 fits into that. You know, are any of these bodies that

1 people want us to list, are they going to be addressed?
2 Are there going to be water quality samples taken in them?
3 Is anything going to be done about them in the future if
4 we say, "No, don't list them. But, you know, try to
5 figure out what's causing this algal growth?" Are they
6 going to be doing that?

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The only
8 listings that we are removing are the ones where TMDLs
9 have been completed. And those listings are for -- and
10 there are control actions for the nitrogen and other
11 nutrients in some of those TMDLs. We're not removing the
12 listings for water bodies where they haven't done a TMDL
13 yet, because we -- I wanted to make sure that we didn't
14 say there was no problem when in fact there might be a
15 problem there.

16 BOARD MEMBER WOLFF: Did I understand
17 correctly --

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We're not
19 adding a new list.

20 BOARD MEMBER WOLFF: I understand.

21 Did I understand correctly earlier that Dr. Gold
22 said the L.A. Board supports maintaining these listings
23 for algae?

24 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yes, they
25 do.

1 BOARD MEMBER WOLFF: Why do they do that if the
2 TMDLs have been adopted?

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'm
4 sorry. I just can't answer --

5 BOARD MEMBER WOLFF: That's fair. I don't want
6 you to speculate.

7 CHAIRPERSON DODUC: Mr. Blum.

8 STAFF COUNSEL BLUM: Well, to some degree I'm
9 speculating too because I wasn't there at the regional
10 board. But just because a TMDL has been adopted doesn't
11 mean that something has become delisted. It still could
12 be impaired. It just means it's impaired being addressed.

13 BOARD MEMBER WOLFF: Of course. Well, okay. I
14 understand that. I guess -- I guess I'm back to my
15 original question then. I'm not clear, if we go ahead and
16 follow the staff recommendation, whether nutrients or
17 whatever are causing the algal problem are going to be
18 studied and addressed down the road. Or do we need a
19 listing in order to stimulate that action?

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: For the
21 TMDLs that have been completed I think they have
22 information -- they're going to have the nutrient
23 information so they can correct those problems. You don't
24 need those algae listings. For the ones where they
25 haven't done the work yet, it's okay to leave those on

1 until they've done that work to develop the TMDL to
2 control nutrients. And that's a prompt, if you will, for
3 those future TMDLs.

4 BOARD MEMBER BAGGETT: The other challenge I
5 have -- I mean you can't list bodies for toxic -- for
6 toxic amounts -- toxicity and toxic amounts if you don't
7 know what the toxin is. And if -- I don't really have a
8 handle on which ones of these they have it more than just
9 nutrients. So I think Dr. Gold made a point phosphorus.
10 There's a number of causes in probably all of them. So if
11 you listed for all those at Klamath, for example, it would
12 be listed for pretty much -- for all the basic causes. I
13 think it's listed for a number of pollutants, depending on
14 what reach you're in.

15 But the other challenge this Board is going to
16 have to grapple with -- and I don't think this is the
17 forum to do it today -- is the whole issue of flows.
18 Because when you're starting to get into all of these
19 biological issues, be it water hyoscine, algae or so on,
20 you're really talking, not just temperature. You're
21 talking flows, which under -- you know, what is it? --
22 101(g) of the Clean Water Act, prohibits the Clean Water
23 Act from delving into the water rights arena. So we're
24 setting ourselves up for a very long legal and policy
25 discussion here if we're going to start really coming up

1 with implementation plans and how we solve these.

2 So I would agree that it's -- to try to get to
3 that detail at this point at this hour on this listing,
4 and we're going to start next month on the next one,
5 that's two years away. Maybe these are the conditions we
6 should cue up for that next discussion.

7 CHAIRPERSON DODUC: Well, I have one question
8 regarding something that the regional board did comment on
9 with respect to algae. And, that is, they said the State
10 Board staff proposes to retain 16 algae listing. So
11 we -- you do support or recommend that we list for algae.

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: What I
13 support is leaving those on the list as a placeholder.
14 For when the regional board gets to those listings, they
15 can find those things, like nitrogen and phosphorus and
16 the flow issues and all these other things. If we remove
17 them, they might not have the impetus. I don't want to
18 err on the side of not finding the problem, you know.
19 They can't see the wolf error, if you know what I mean --
20 the Type 2 error. So leaving those on is an
21 environmentally conservative approach. Taking them off
22 the list wherein the TMDL has been completed is just a
23 rational approach based on what they've already done and
24 they focused on those nutrients.

25 And I think it's protective to leave those on

1 because it starts the discussion on how to deal with these
2 extremely complex TMDLs when it comes to nutrient control.

3 CHAIRPERSON DODUC: So you support leaving algae
4 on the list, leaving it on the list to initiate that
5 discussion in that work, but you don't support adding it
6 to the list to initiate that discussion and that work,
7 which I think is what Ms. Sheehan is trying to get at.
8 Perhaps not for the Region 4 listing, but perhaps for
9 Region 1's.

10 SENIOR ENVIRONMENTAL SCIENTIST WILSON: On the
11 Region 1, we haven't evaluated all that information. But
12 it's the same general argument. If it's important to
13 control the blue-green algae, you control those things
14 that are out there that are controllable by humans. And
15 the toxic agent, that chemical, only comes out of those
16 cells when the plant dies.

17 CHAIRPERSON DODUC: But if that's the case, then
18 you would recommend delisting the 16 algae.

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: No, I
20 wouldn't recommend delisting. I'm -- see, this whole idea
21 of blue-green algae coming up, these are existing listings
22 on the Klamath River for temperature -- flow-related
23 issues, you know, like temperature --

24 CHAIRPERSON DODUC: But not algae?

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: But not

1 algae. And the regional board is in the development of
2 their TMDL. We've talked to them about it. They're going
3 to have endpoints related to these blue-green algae and
4 the chemical that are causing these toxic effects. You
5 know, that's common sense. That's good, because that
6 shows them when they're being successful. And the
7 nutrient levels are going to be quite low in this on
8 TMDLs.

9 So, you know, they're in a great track to solve
10 that problem up there. It's just, once this list -- you
11 know, these blue-green algae are in every water body in
12 the state. It's just when they're out of balance that
13 it's an issue.

14 CHAIRPERSON DODUC: Well, I would agree with Mr.
15 Baggett and Dr. Wolff that we cue this issue up as one of
16 the priorities when you proceed on the 2008 listing.

17 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Be happy
18 to do that.

19 CHAIRPERSON DODUC: Any other comments,
20 questions, motion?

21 BOARD MEMBER WOLFF: Well, we still have exotic
22 species and --

23 CHAIRPERSON DODUC: Oh, that's right.

24 BOARD MEMBER WOLFF: -- and biological
25 communities impairment from Dr. Gold's presentation.

1 Exotic species, I'm not clear. What are the
2 L.A. -- well, actually for both of these. Exotic species
3 and biological communities impairment. Dr. Gold asked for
4 listings. What does the L.A. Board staff ask for?

5 SENIOR ENVIRONMENTAL SCIENTIST WILSON: They
6 haven't responded on these issues to us. I didn't see it
7 in their letter. At least I don't recall seeing it in
8 their letter. Let me pull it out.

9 BOARD MEMBER WOLFF: Okay. We can come back in a
10 minute if you want.

11 BOARD MEMBER BAGGETT: While we're on that, I
12 would propose again to my colleagues that we bring that
13 one back also and have a discussion with Fish and Game.
14 We've got a major problem with various mussels. We've got
15 it on the east side of the Sierra streams now. You've
16 got -- it's something that maybe we should deal with. I
17 think we should. But to deal with it right now at this
18 time, I'd rather deal with it with the science, work with
19 Fish and Game and U.S. Fish and Wildlife and NOAA
20 Fisheries. They've all got the data. They've all got
21 programs going. It might be useful to their programs to
22 have this list for these different evasive species. But
23 let's do it with a little more thought than -- would be my
24 only comment.

25 But it's something I think we should cue up and

1 at least work with resource agencies. I'm sure they've
2 got all kinds of -- I know they've got a lot of data.
3 I've seen all here science.

4 Did they list -- did they propose? That was the
5 question. Did they propose to do anything, regional?

6 SENIOR ENVIRONMENTAL SCIENTIST WILSON: No. I
7 can't find it in the letter.

8 BOARD MEMBER BAGGETT: I think we should propose
9 it. I really do. But let's get some more information --

10 BOARD MEMBER WOLFF: I'm concerned about
11 consistency between regions too. I mean in Region 5 we
12 said, okay, exotic species at least are listed for
13 discharges of them, of which we know there are some
14 ballast water.

15 In this case I'm not sure any of these species
16 are being discharged. Maybe that's the distinction as to,
17 you know, why we shouldn't be moving forward at this
18 point. But if they are discharged, then it would be
19 inconsistent to have -- require Region 5 to, you know, put
20 it on their list to do something but not to do the same
21 for Region 4.

22 CHIEF DEPUTY DIRECTOR HOWARD: I guess I'd only
23 make the comment that -- I mean I'm certain they're
24 discharged. The New Zealand Mudsnaill is starting to
25 appear in various areas and, you know, it's been

1 introduced. I know we've got it here in Putah Creek --
2 and it's affecting the trout fisheries there.

3 But I think one of the reasons is there has been
4 a substantial amount of time to consider the listing of
5 the Region 5. This was a subject of intense discussion in
6 the last listing back in 2002. And so there's a history
7 here that was something that made staff comfortable over a
8 long period of time.

9 There just isn't that type of history at this
10 location yet, a chance to get the regional board input and
11 further evaluate the information and to get comfortable
12 with the concept of listing. I mean if we're really going
13 to take the tack that every introduced species needs a
14 listing, then we are going to list -- everything in the
15 state right now.

16 BOARD MEMBER WOLFF: No, no. It's not that --
17 it's not that every introduced species needs a listing.
18 It's that every introduced species which harm beneficial
19 uses needs a listing.

20 CHIEF DEPUTY DIRECTOR HOWARD: Right. There's
21 the issue. And that hasn't been I think adequately looked
22 at in these water bodies that have been raised in Region
23 4. Whereas in Region 5, they have been the subject of
24 intense discussion at Bay Delta forums and other forums.
25 And they simply have a history and it makes them feel

1 comfortable --

2 BOARD MEMBER WOLFF: Thank you. That's a good
3 answer.

4 BOARD MEMBER BAGGETT: And the snail is being
5 transported by fishing boats, by boots and waders and all
6 kinds of things. So we're having -- but I mean again we
7 just need to think about it more. And it does impact the
8 Sierra streams and the native fish. I mean it's clear.
9 Fish and Game has made it a major priority.

10 CHIEF DEPUTY DIRECTOR HOWARD: Yes, it's a
11 serious problem.

12 BOARD MEMBER BAGGETT: Serious problem. But
13 maybe there's a -- but I think we need to figure out, does
14 this help, hurt? How do we plan it?

15 CHAIRPERSON DODUC: Questions, comments, further
16 discussion?

17 BOARD MEMBER WOLFF: So it sounds like we're
18 moving toward moving the list for Region 5 -- I'm sorry --
19 Region 4, with an additional direction to staff and to EPA
20 to work out whether these various beaches should be listed
21 or delisted, those beaches specifically raised in the
22 submittal from Dr. Gold.

23 CHIEF DEPUTY DIRECTOR HOWARD: You'll probably
24 request U.S. EPA and direct us. It would be a good thing.

25 BOARD MEMBER WOLFF: Sure. Thank you.

1 CHAIRPERSON DODUC: Ms. Strauss just left.

2 BOARD MEMBER WOLFF: Isn't that a standard
3 meeting rule? I thought you get to task people who aren't
4 present.

5 CHAIRPERSON DODUC: Mr. Wilson.

6 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Would you
7 also like us to look at that toxicity data with that
8 bacteria information --

9 CHAIRPERSON DODUC: Yes.

10 SENIOR ENVIRONMENTAL SCIENTIST WILSON: -- with
11 them?

12 CHAIRPERSON DODUC: Yes, please.

13 BOARD MEMBER WOLFF: The toxicity data by L.A.
14 County San Districts?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The
16 Walnut Creek information that was -- toxicity data that
17 came in that's --

18 CHAIRPERSON DODUC: From the L.A. County?

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yeah,
20 that's correct.

21 BOARD MEMBER WOLFF: I would like any -- yeah, I
22 would like any other information that can be resolved
23 without making a policy judgment to be processed and
24 resolved.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Then

1 we'll do that too.

2 CHAIRPERSON DODUC: Was that a motion, Dr. Wolff?

3 BOARD MEMBER WOLFF: Yes, if anyone understands
4 the motion. Do I need to restate it?

5 CHIEF COUNSEL LAUFFER: It's sufficiently clear.

6 BOARD MEMBER WOLFF: It's a motion.

7 CHAIRPERSON DODUC: I will second.

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON DODUC: Any opposed?

11 Abstain?

12 Hearing none, the motion -- the interim motion is
13 carried.

14 We are done with Los Angeles Basin.

15 Two down and seven to go.

16 If I may take a moment and see a show of hands
17 for those who are here for Region 1, North Coast.

18 I see two, three.

19 Region 3 -- I mean Region 2 -- sorry -- San
20 Francisco.

21 Three, Central Coast?

22 Four and five we've done.

23 Six, Lahontan.

24 No Lahontan.

25 BOARD MEMBER WOLFF: Let's move that right away.

1 CHAIRPERSON DODUC: Seven, Colorado.

2 I see four for 7.

3 Eight, Santa Ana.

4 Oh, lots for -- two for Santa Ana.

5 San Diego?

6 Two.

7 Does anyone wish to move Lahontan?

8 BOARD MEMBER WOLFF: Sure. I move Lahontan.

9 BOARD MEMBER BAGGETT: Second.

10 CHAIRPERSON DODUC: All in favor?

11 (Ayes.)

12 CHAIRPERSON DODUC: No opposed or abstained?

13 Lahontan is moved.

14 All right. Let's go ahead and take 9, San Diego,
15 since there are only two speakers for that.

16 And the two speakers have left already.

17 Oh, no?

18 Okay. San Diego please.

19 Why be -- I want to be consistently inconsistent.

20 BOARD MEMBER WOLFF: Please don't.

21 (Laughter.)

22 CHAIRPERSON DODUC: Actually I do have a request
23 from someone from the San Diego area who needs to leave.

24 So San Diego.

25 MR. BOLLAND: Okay. It's not me --

1 CHAIRPERSON DODUC: Maybe he left already.

2 MR. BOLLAND: -- the person who would like to
3 speak first.

4 Okay. I'll stay up hear.

5 CHAIRPERSON DODUC: Oh, okay.

6 MR. BOLLAND: I'm David Bolland with the
7 Association of California Water Agencies. Thanks again,
8 Chair Doduc and members.

9 What I'm here to talk about is ACWA's concern
10 about the blanket listing of a whole bunch of terminal
11 reservoirs in San Diego region for salinity and associated
12 impairments.

13 We recognize that -- and a number of our member
14 agencies have written comments to this effect and are
15 concerned basically about how these reservoirs are being
16 handled in this process. Those agencies have made it very
17 clear why they believe this is an erroneous approach to
18 using the listing process and the TMDL process. It
19 revolves around the question of whether the water quality
20 standards are applicable and whether or not the
21 exceedances are controllable by the agencies involved. A
22 lot of these reservoirs actually are source -- are
23 reservoirs that use imported water from Colorado River,
24 which already is high in salinity. And they actually have
25 native salinity issues with some of the rocks that

1 underlie a lot of those reservoirs in that area.

2 And so we're concerned in general, ACWA
3 supporting the concerns of its member agencies in that
4 area, that the TMDL process is really not the right
5 approach to handling this. We see a basin plan amendment
6 situation possibly to deal with the standards problem. We
7 see a more collaborative approach to salinity management
8 in the San Diego area. Our agencies are interested and
9 expressed that.

10 We do recognize the technical response, I guess,
11 that the staff has made that they believe that this is
12 nothing they can do through the listing process. But I
13 guess I will say you have the attention of a lot of water
14 agencies from that -- down to the most local agencies in
15 that area. A lot of them are concerned about enormous
16 possible expenses, for no real reason -- no environmental
17 reason, to try to deal with salinity, when in fact through
18 the mixing process and through the treatment process this
19 drinking water is processed and is consumable by the
20 public and is acceptable for drinking water standards.

21 And that's pretty much the crux of my comments.

22 CHAIRPERSON DODUC: Mr. Baggett.

23 BOARD MEMBER HOPPIN: So you're not suggesting
24 that you cease importing water from the Colorado river, I
25 assume?

1 MR. BOLLAND: Well, that's a concern I think some
2 folks have, is that, you know, the next process here would
3 be to start doing TMDLs on salinity. And when you look at
4 controllable sources and discharges, you know, we're
5 getting at Dr. Wolff's nuance here, that I think is a very
6 important one, that you have to have dischargers that you
7 can control and that you -- you're not talking about just
8 conditions of the water bodies. If you were to trace that
9 down to the exporters and try to look at those reservoirs
10 as if they were habitat and that somehow you had to
11 protect it from the salinity, from the very water that's
12 filling those reservoirs, you would conceivably come to
13 some point of concluding that your implementation measures
14 are to cease importing and managing water in southern
15 California, which is an absurd conclusion.

16 So I guess the concern we have is that this
17 entire TMDL process kind of deals with salinity and deals
18 with the use of terminal reservoirs in a way that's not
19 effective to managing water resources in California. And
20 we're really concerned about just long-term costs of
21 dealing with this bureaucratic jump-through-the-hoops
22 situation. And we hope that there are some ways that we
23 can enter into fruitful discussions with the regional
24 boards to deal with these issues in a more effective way.

25 BOARD MEMBER BAGGETT: My concern is -- if it is

1 an impairment, then maybe we should deal with it and maybe
2 it's upper basin state's challenge and we deal with them.
3 But if we're blanketly listing all reservoirs in the San
4 Diego region, or is this a site by site --

5 MR. BOLLAND: Well, it's not -- yeah, it sounded
6 like a listing for all. There's a long list of them, but
7 probably a few there --

8 BOARD MEMBER WOLFF: But you can see each one and
9 identify whether it's an underlying problem? Like you
10 could just -- Mono lake, Sails Lake. I mean there's
11 always sight of the Sierra water. You list all those?

12 MR. BOLLAND: Saline water. We're talking about
13 actual terminal reservoirs.

14 BOARD MEMBER HOPPIN: Mr. Wilson, would -- to add
15 to Mr. Baggett's comment, would -- in light of the
16 comments presenter's making, would you see this situation
17 being markedly different than the situation we dealt with
18 with the All American Canal where we're dealing with
19 natural occurrence and water that meets standards at the
20 point of diversion with no additional inputs, or is this a
21 uniquely different situation in your view?

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: This is
23 an issue where the beneficial use is the municipal source.
24 We looked at the basin plan, had a narrative objective for
25 protection of beneficial uses. We applied the maximum

1 contaminant level values to this water body. It showed
2 that there was an exceedance in some percentage of the
3 samples. I mean I could show you the details.

4 MR. BOLLAND: Could I speak back to that very --
5 the crux of the issue is the standard. Because I think
6 that's the crux.

7 BOARD MEMBER WOLFF: Excuse me. Could we let our
8 staff finish.

9 MR. BOLLAND: Yes. Oh, absolutely.

10 SENIOR ENVIRONMENTAL SCIENTIST WILSON: And our
11 recommendation was based on our assessment of those data
12 with respect to, you know, these standards. And we used
13 these numbers to interpret the narrative, and that's the
14 conclusion we came to.

15 You know, we didn't -- we looked at the water as
16 it exists. We didn't say, "Well, it's higher than the
17 source water so we'll not list it." We just looked at the
18 water bodies for themselves and listed based on the
19 numbers that we had available to us, and that's what we
20 did. It's pretty much that simple and that
21 straightforward. It was not a blanket listing. We did
22 not pick all water bodies that are terminal reservoirs and
23 list them all in some fashion. We went through one by
24 one. And, you know, there are dozens of constituents and
25 there's just a few per water body. You know, like

1 Loveland Reservoir we have three. It's aluminum,
2 manganese, and dissolved oxygen. There's a dissolved
3 oxygen problem in that water body. So that's what we did.

4 BOARD MEMBER BAGGETT: But are there fish in the
5 water body? Or is it a water storage?

6 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I assume
7 there are fish in the water body.

8 CHAIRPERSON DODUC: Okay.

9 BOARD MEMBER BAGGETT: So have you taken this
10 approach to all the other southern California regions?

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Whenever
12 we had data from these kinds of source water
13 assessments -- and the policy -- the listing policy says
14 we'll review all that kind of information, including
15 source water assessments, and that's what we did in this
16 case. We're trying to follow the provisions of that
17 policy.

18 BOARD MEMBER BAGGETT: Because Region 8, Region
19 7, Region 4, you'd have the same challenges in all the --

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We'd have
21 the same challenges.

22 CHAIRPERSON DODUC: And they were consistent.

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We
24 were -- yeah, we were consistently challenged by all of
25 these.

1 (Laughter.)

2 BOARD MEMBER BAGGETT: But you would know this in
3 Region 9, not in the other three southern --

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, we
5 did some of it in Region 7 and, you know, inappropriately
6 listed -- or recommended listing the All American Canal,
7 and we dealt with that as an issue, and applied the
8 upstream Colorado River number. We haven't done that for
9 these water --

10 BOARD MEMBER BAGGETT: Where's San Diego County
11 Water Authority?

12 MR. BOLLAND: Well, they've written a very
13 detailed letter, as a matter of fact, and several others
14 have too.

15 And to get to the crux of it, the very reason on
16 the All American Canal that was given by staff for listing
17 it, which was this use of the maximum contaminant level,
18 is actually a secondary MCL that was adopted by DHS for
19 drinking water purposes. And it's actually a consumer
20 acceptance contaminant level range. And the top level of
21 the range was exceeded. This is a drinking water
22 standard. It's for essentially aesthetic purposes for the
23 consumer of the water. It's not intended to protect
24 beneficial uses of any sort in the environment. And we
25 believe it was used appropriately on the All American

1 Canal, which we'll get to in Region 7. But the same
2 rationale was used on all these -- various of these
3 drinking water reservoirs in San Diego area.

4 Now, I have looked through the list. There are a
5 few reservoirs in various other locations that are listed
6 for salinity. I haven't looked at the background fact
7 sheets, so I don't know what the rationale was on those.
8 I'm focused strictly on the rash of them. And there are
9 at least probably a dozen in the San Diego area. And some
10 of those do have challenges that are associated with other
11 constituents, like manganese and this dissolved oxygen
12 situation and other things, which again are maybe native
13 conditions of the rock and leaching into the water.

14 But what I'm talking about specifically are TDS
15 listings or chlorides or related -- kind of salt-related
16 listings. And we're just concerned that the rationale
17 that was used by the staff for setting the standard for
18 interpreting the narrative standard by the region, that
19 rationale that was used was inappropriate use of a
20 drinking water standard that does not protect the
21 beneficial use. And, in fact, it obfuscates the very
22 purpose of that water, which is drinking water.

23 BOARD MEMBER BAGGETT: So we just export more of
24 Sacramento Delta water to make up for water they're
25 getting from Colorado --

1 MR. BOLLAND: As long as it's good water. We'll
2 want it when it's the most -- or the least saline.

3 BOARD MEMBER WOLFF: So if I understand
4 correctly -- and I apologize. It's getting late. I
5 didn't quite catch the beginning. You're only objecting
6 to those listings for terminal reservoirs where a listed
7 contaminant is some sort of salt?

8 MR. BOLLAND: And by that -- in general that's
9 the objection that I'm bringing forward as ACWA. And it's
10 based on this larger policy concern about misuse of the
11 secondary MCL view.

12 However, I will say that the members and San
13 Diego County Water Authority and Sweet Water and all the
14 various -- Helix and all the other agencies, they have
15 some very specific concerns about manganese and dissolved
16 oxygen and other things. And, again, their argument is
17 that it's all related to the way they manage the
18 reservoirs, the way the thermocline happens, the way the
19 water moves in and out. And it's all an artifact of the
20 fact that these are drinking water reservoirs; they are
21 not habitat that needs to be protected.

22 BOARD MEMBER BAGGETT: Maybe Craig or somebody,
23 Tom, could refresh my memory here.

24 Last time around we had -- it was one of L.A.
25 DWP's reservoirs where it was impaired for copper up in

1 Region 7 -- 6, right?

2 STAFF COUNSEL BLUM: Yeah, right.

3 BOARD MEMBER BAGGETT: I think Steve probably
4 knows it well.

5 STAFF COUNSEL BLUM: I know it well.

6 BOARD MEMBER BAGGETT: And we listed it for
7 copper even though they were required to put the copper in
8 to deal with --

9 STAFF COUNSEL BLUM: It was the way they were
10 putting the copper in that caused problem. When they
11 changed their practices, it turned out that they -- the
12 regional board was able to delist it for copper because
13 they were meeting the standards.

14 This I think is an artifact -- the argument here
15 is an artifact of the larger argument that these
16 reservoirs are not waters of the state and therefore don't
17 have any water quality standards other than we're using
18 this water to serve our customers for drinking.

19 It's what L.A. DWP was arguing and --

20 BOARD MEMBER BAGGETT: We could argue it again.

21 STAFF COUNSEL BLUM: It's the same thing here.

22 CHIEF DEPUTY DIRECTOR HOWARD: I actually have a
23 slightly different perspective on it, which I'll share.

24 This I think is very similar to the All American
25 Canal issue as raised by Board Member Hoppin. We have in

1 the Colorado River a salinity problem. And the
2 Board -- this Board has adopted objectives that exceed the
3 secondary MCL for TDS. And even though the beneficial use
4 of the Colorado River is drinking water supply, and even
5 though it has narrative objectives that would -- under the
6 kind of conditions that are being suggested here would
7 have suggested a use of a secondary MCL, based on those
8 kind of considerations -- but the Colorado River is not
9 being listed for salinity because we had adopted a
10 specific salinity objective which was assumed to be
11 consistent with the narrative objective and the municipal
12 use.

13 We had at one point suggested listing the All
14 American Canal. Even though the same narrative objective
15 applied, but there was no salinity objective and it
16 exceeded secondary MCLs. But we -- the staff decided that
17 that wasn't appropriate because that water was being
18 diverted from the Colorado River to put to beneficial use
19 for very beneficial uses that were identified in the
20 Colorado River. And so it would hardly make sense to say
21 that it was impaired if in fact it hadn't been impaired
22 when it was in the Colorado River.

23 And we're now here sitting in sort of the same
24 circumstance. Much of that water is ending up in the
25 terminal reservoirs. We're again taking the narrative

1 objective, the municipal drinking water supply, applying
2 secondary standard and saying that it doesn't meet those
3 uses.

4 So I think the same arguments that you see in
5 Colorado River and the All American Canal and these
6 terminal reservoirs are repeating themselves.

7 I would assert that this is a policy issue that
8 the Board needs to address, it needs to make a decision on
9 now. The recommendation from the staff was that the All
10 American Canal appropriately shouldn't be listed. I think
11 the same rationale could very possibly apply here. But I
12 would leave that to the discretion of the Board members in
13 their policy determination.

14 BOARD MEMBER HOPPIN: Mr. Howard, in addition to
15 the well identified Colorado River, the speaker mentioned
16 that there was a natural occurrence. Is there a tolerance
17 for natural occurrence or is it a significant issue in
18 this case?

19 CHIEF DEPUTY DIRECTOR HOWARD: There is
20 potentially. However, the way we've handled naturally
21 occurring pollutants in the past -- it's occurred quite a
22 bit in Region 6 -- is if the -- the exceed water quality
23 objectives, they get listed. If it's a naturally
24 occurring phenomenon and it's being managed appropriately,
25 then the approach from the regional board should be to

1 change the water quality objective to reflect the fact
2 that it's a naturally occurring pollutant and you're still
3 managing to meet the purposes of what the reservoir's
4 constructed.

5 So this is the way we've managed things in the
6 past. Of course you could make the exact same argument
7 for TDS. I mean you could say they should be changing the
8 objective -- the numerical objective in the All American
9 Canal, and they should be changing the narrative
10 objective -- the salinity objective in these terminal
11 reservoirs.

12 However, since the source water already has an
13 objective, that's why we elected not to do that in the All
14 American. And I think the same rationale could be applied
15 to the terminal reservoirs.

16 Is that all clear enough?

17 BOARD MEMBER BAGGETT: Yeah.

18 BOARD MEMBER WOLFF: Perfect.

19 CHIEF DEPUTY DIRECTOR HOWARD: Thank you.

20 CHAIRPERSON DODUC: Matter of consistent
21 application.

22 Comments.

23 BOARD MEMBER BAGGETT: I don't see how we can
24 list these. And if we do, we need to have a much bigger
25 forum than this, because you're going to have great

1 interest expressed by a lot of people in the water supply
2 community that aren't even aware this conversation's
3 taking place.

4 BOARD MEMBER WOLFF: Well, I would agree for TDS.
5 I think that listings for dissolved oxygen or other
6 things, you know, are appropriate. If the terminal
7 reservoir has fish in it and there's an applicable
8 objective protecting those fish, then the operator of the
9 reservoir's got to protect those fish.

10 CHIEF DEPUTY DIRECTOR HOWARD: These terminal
11 reservoirs all have an existing beneficial use fish
12 habitat need --

13 BOARD MEMBER WOLFF: Yes, except what they gave
14 us.

15 So I would agree completely with respect to TDS
16 or salts of various types, because it is a secondary MCL
17 and the purpose of the water is drinking water. People
18 bring water in that's salty as part of their water supply
19 planning. So I can't see how that could be possibly
20 impairing the use of the water for drinking water.

21 CHAIRPERSON DODUC: Thank you.

22 I don't think I have a card for you. Would you
23 fill one out just for the court reporter's sake.

24 MR. BOLLAND: Well, I filed one earlier that
25 didn't identify the specific regions.

1 CHAIRPERSON DODUC: Very good.

2 BOARD MEMBER BAGGETT: He'll be back again.

3 MR. BOLLAND: Just one more --

4 CHAIRPERSON DODUC: And then I think there was
5 one other commenter on San Diego.

6 Maybe not.

7 Any other comments on San Diego?

8 BOARD MEMBER WOLFF: Move quickly before they --
9 before they come back from the bathroom let's move San
10 Diego --

11 (Laughter.)

12 BOARD MEMBER WOLFF: -- with the change that
13 we've just discussed as the lead for those listings that
14 were caused by the secondary MCL.

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It
16 appears there are 11 reservoirs -- 11 listings that we'll
17 remove.

18 CHAIRPERSON DODUC: Okay. Removing those 11
19 listings for TDS.

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: They're
21 not all reservoirs. We will remove all of them, even if
22 there's more than 11. Okay?

23 BOARD MEMBER WOLFF: Okay. But only with respect
24 to TDS.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Only TDS.

1 CHAIRPERSON DODUC: Motion by --

2 BOARD MEMBER WOLFF: Let's clarify the motion.

3 It's to move the list for Region 9 with the
4 deletion of those terminal reservoirs which -- for which a
5 listing was proposed, based on the secondary MCL for TDS.

6 BOARD MEMBER HOPPIN: I'll second the motion.

7 CHAIRPERSON DODUC: Okay. Quickly vote.

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON DODUC: Any opposed?

11 Abstain?

12 Okay. This motion's carried. Thank you.

13 Let's work backwards. Santa Ana, Region 8.

14 And, by the way, just so it's clear. All this
15 are with the changes that the staff recommended in this
16 list.

17 MR. BAZEL: Madam Chair, members of the Board,
18 thank you. My name is Larry Bazel with the Law Firm of
19 Briscoe, Ivester & Bazel in San Francisco. And I'm here
20 to talk about Big Bear Lake.

21 Big Bear Lake is proposed to be listed for PCBs.
22 In effect, the listing tells the public the PCB levels in
23 sport fish in this lake are high enough to harm public
24 health. I hope you will reconsider that statement or that
25 conclusion. Because -- it's important to Big Bear Lake,

1 which is heavily used for fishing. And after you see what
2 it's based on, I hope you'll conclude that there really
3 isn't enough to support it.

4 It turns on two things: One is a suggestion in
5 an OEHHA staff report; and the other is carp, which is not
6 a commercial list sport fish. It was on Dr. Gold's list
7 of exotic species. And it is a nuisance in Big Bear Lake.

8 The level that's being used here is to determine
9 whether the PCBs in the fish are harmful to the public
10 health. It comes from an OEHHA staff report in which the
11 author said -- and I want to read this to you -- it's one
12 sentence -- because it shows that the author did not
13 intend this to be used as a regulatory value. "The
14 screening values are not intended as levels at which
15 consumption advisories should be issued, but are useful as
16 a guide to identify a fish species in chemicals from a
17 limited data set, such as this one, for which more
18 intensive sampling, analysis or health evaluation are to
19 be recommended."

20 So what's being used here to list Big Bear Lake
21 is not an official OEHHA guideline, but it's a
22 recommendation in a staff report. I think that's two
23 conservative. This Board shouldn't be that conservative.
24 It should rely on official guidelines. If OEHHA comes up
25 with an official guideline, then there's plenty of time to

1 list in the next round, assuming that the fish data's
2 supported, which takes me to Point 2 here.

3 This turns on carp. It turns on four samples, of
4 which three are carp. A look at the fourth, it was a
5 Largemouth bass.

6 If you take away those three carp samples, you
7 have one data point one. Data point isn't enough to list.
8 Carp, as I've said, are nuisance. Each year there's an
9 annual carp roundup in Big Bear Lake in which they take
10 thousands of tons of carp out of the lake and bury them.
11 This may very well be a good way of dealing with exotic
12 species. But it's not a reason to tell the public that
13 PCB levels in the fish that they are fishing for, taking
14 home and eating, are too high.

15 There is yet another issue here, which is that
16 there's no discharge of waste water into Big Bear Lake.
17 So if PCBs are there, there must be some historic remnant.

18 The concern here --

19 CHAIRPERSON DODUC: Please do wrap up.

20 MR. BAZEL: -- is that listing will not do any
21 good. It will confuse the public. It will interfere with
22 other things that are going on in the lake, things like
23 control of algae and nuisance plants. And it just -- it
24 won't be helpful.

25 Thank you.

1 CHAIRPERSON DODUC: Mr. Wilson.

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The
3 guideline that we used comes from OEHHA. They talk in
4 their documents about using these numbers -- not using
5 them to develop fish consumption advisories. We are by no
6 means developing a fish consumption advisory in this
7 process.

8 They go through a long, involved process for
9 posting the whole thing. Listing policy allows the Board
10 to use these types of guidelines in this type -- in this
11 process. Yes, it comes out of that staff report. It's
12 the best available value that we could use for this
13 purpose. OEHHA is reevaluating their guidance -- their
14 guidelines, if you will. Some are higher, some are lower.
15 My recollection on PCBs is it's exactly the same number as
16 the one we're using.

17 I think we're within -- I think this is a good
18 listing. The use of carp fish -- again, I mentioned this
19 in my earlier presentation -- I think we're being
20 conservative environmentally, protective, if you will, by
21 using this. If you don't want to use that, we would
22 only -- we would exclude that and there would not be a
23 listing. But I think including all the information for
24 all the fish is consistent with the listing policy and
25 that's how we proceeded with this recommendation. And

1 we've done this in several other water bodies in the
2 State.

3 CHAIRPERSON DODUC: Thank you, Mr. Wilson.

4 BOARD MEMBER WOLFF: Is it true that listing the
5 water body will in some way lead to posting of signs, as
6 suggested by the speaker?

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I don't
8 see that happening, because OEHHA would have to come up
9 with a fish advisory. And they -- their burden is much
10 greater than our burden. So there would not be posting of
11 signs related to this listing.

12 BOARD MEMBER WOLFF: Thank you.

13 And then one other question, which is: Where is
14 Big Bear Lake?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Southern
16 California.

17 MR. BAZEL: It's up in mountains from
18 Riverside -- at Riverside.

19 BOARD MEMBER WOLFF: Up in the mountains from
20 Riverside.

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Eighteen
22 or twenty miles from Riverside up in the San Gabriel
23 Mountains.

24 BOARD MEMBER WOLFF: San Gabriel Mountains.
25 That's good, that helps. And how big is Big Bear Lake,

1 roughly?

2 MR. BAZEL: It's miles long. Big enough so that
3 it is a popular tourist destination. People from L.A. can
4 drive up there on the weekend. Have snow in the winter.
5 A nice lake to fish in the summertime. And enjoy
6 themselves.

7 Whether or not OEHHA actually posts signs, but
8 the water district here has some obligations. Once you
9 say that the levels are high enough so that they're
10 harmful to health, then that --

11 BOARD MEMBER WOLFF: That's not what the listing
12 says.

13 MR. BAZEL: Yes, it is -- yes, it does. It
14 says -- the narrative standard says that PCB shall not be
15 discharged by the waste types of discharges at levels that
16 are harmful to human health. This is to protect the
17 beneficial use of commercial and sport fisher. So if
18 you're saying that that narrative standard is being
19 exceeded and levels are high enough to harm human health,
20 it's not a maybe.

21 BOARD MEMBER WOLFF: I see.

22 Are there other lakes -- please, go ahead.

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: There's
24 one more point.

25 You know, PCBs are not a naturally occurring

1 substance. I can't explain how it got into that lake, but
2 it had to get in in some fashion. It's probably, you
3 know, a water treatment plant discharge or something like
4 that. But that's some kind of surface runoff and it makes
5 its way into that water body.

6 BOARD MEMBER WOLFF: This relates to another
7 question. Are there other lakes in that area for which we
8 have data?

9 CHAIRPERSON DODUC: I heard Arrowhead.

10 BOARD MEMBER WOLFF: Okay. So this is near Lake
11 Arrowhead. That helps.

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: But your
13 question's --

14 BOARD MEMBER HOPPIN: Mr. Wilson, would you agree
15 then with the speaker, is that this could potentially be a
16 legacy-type issue and not a result of current discharge?

17 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Could
18 very well be. I just don't know.

19 CHAIRPERSON DODUC: Well, just because it could
20 be a legacy issue doesn't necessarily mean that we don't
21 list it.

22 CHIEF DEPUTY DIRECTOR HOWARD: Need clarification
23 in that respect.

24 We list many legacy issues.

25 CHAIRPERSON DODUC: Exactly.

1 CHIEF DEPUTY DIRECTOR HOWARD: We have listings
2 for DDT, which we're reasonably certain is no longer being
3 used in California in agriculture. So, you know, it's not
4 unheard of to list legacy.

5 CHAIRPERSON DODUC: Thank you, Mr. Bazel.

6 I think on this one my preference is to err on
7 the side of caution. But we do appreciate the comments
8 and the discussion.

9 For now we'll move on to any other speakers
10 dealing with Santa Ana.

11 MR. THOMAS: Thank you, Madam Chair and members.
12 Bill Thomas speaking on behalf of Lake Elsinore Valley
13 Municipal Water District. And it's a PCB listing very
14 similar to what you just heard. Although it's even a
15 little more exotic than you would list in lake Elsinore.

16 We submitted comments January 30th and then
17 Charlie complicated things further by the 19th of October.
18 Having gone to the same state university, I commiserate
19 with the reading impairment that some of us have.

20 In Lake Elsinore there is no beneficial use that
21 is being impacted relative to these PCBs. There is no
22 listing for municipal or for the sport fisheries.

23 I served on the State Board's PAG with a couple
24 other members in this room -- and with Craig on the
25 listing criteria. And we clearly talked about, and it

1 found its way to the State Board policy, that you do these
2 listings and develop the TMDLs to protect specific
3 beneficial uses and water quality objectives. In fact,
4 the policy also says that it should not be used to change
5 beneficial uses or to change water quality objectives.
6 And we think that this listing is not reflective of any
7 beneficial use protection.

8 I'll make a couple of other points quickly. I
9 associate myself with all the comments that the previous
10 speaker had said on behalf of the other water body.

11 This 20 PCB screening level is in one staff
12 document at OEHHA. And the document itself says that it
13 shall not be intended to be used as a health advisory.
14 Your obligation relative to OEHHA is to deal with listings
15 dealing with when they have set health advisories. This
16 expressly says it is not to be used for that purpose.
17 Thus, we think that this is on an inappropriate protective
18 level.

19 We also think that the old fish data that you
20 heard referenced in the 1990s is remote, even though there
21 isn't a standard in listing that stuff is too old. There
22 has been in 2002, 2003 water quality testing in Elsinore
23 60 samples, one of which -- 59 showed no PCB, one of which
24 had low levels of PCB.

25 The source of the PCB -- and I'll rapidly

1 conclude -- is that there are some exotic carp still in
2 Elsinore that feed along the bottom of the lake. That's
3 where they get exposed. There is virtually no PCB in the
4 water column. There is an active fish eradication program
5 targeted at these carp.

6 So we think there's a number of points that are
7 in our written comments that would gravitate against the
8 listing, and that there is no reason to list. There is no
9 use of this product. There is no discharge of this
10 product. It is historic legacy at the lake bottom. There
11 is no exposure in the water column.

12 And what are you going to do with establishing a
13 load to implement, you know, a TMDL where we're already
14 trying to take care of this carp problem? It is not a
15 commercial or a sport fish and there is no such beneficial
16 use protection there that you're protecting.

17 Thank you.

18 CHAIRPERSON DODUC: So you're saying that Lake
19 Elsinore does not have any municipal or fishery beneficial
20 uses?

21 MR. THOMAS: No, it does not.

22 CHAIRPERSON DODUC: Mr. Wilson.

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: When we
24 first started developing this listing we went to the basin
25 plan and we found just what Mr. Thomas had talked about.

1 There's not a listing for the fish consumption beneficial
2 use.

3 So the next thing we did was we called the
4 regional board and we asked them directly, "Do people fish
5 in Lake Elsinore?" And they say, "Absolutely, yes. It's
6 an existing use." And existing uses need to be protected.
7 I'll turn to my attorney friends to confirm that. But we
8 felt that if there was an existing use, that we needed to
9 evaluate this data in this way. And that's what we did.
10 It's pretty much that simple.

11 CHAIRPERSON DODUC: Dr. Wolff.

12 BOARD MEMBER WOLFF: Do we know where Region 8
13 staff stand on this? On these two actually, both of them.

14 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Sorry,
15 I -- I don't have a letter from them on this, and I just
16 can't --

17 BOARD MEMBER WOLFF: I just wondered if we knew.

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I can't
19 remember.

20 MR. BAZEL: My understanding is that Region 8
21 staff do not agree with the State Board staff here, do not
22 support listing. They met with OEHHA before this process
23 started and concluded that PCBs were not a problem in the
24 lake.

25 BOARD MEMBER WOLFF: I appreciate that. But it's

1 sort of hearsay, right? I mean --

2 CHAIRPERSON DODUC: Mr. Wilson.

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well,
4 yeah, we can debate who said what when. But that focused
5 on developing a health advisory for the water body, and I
6 think that's what they agreed upon.

7 BOARD MEMBER WOLFF: I just want to clarify --
8 before we try to figure out what to do about this, I want
9 to clarify my earlier remark about discharges.

10 I think that we're obligated to list any impaired
11 water body that was impaired by discharges of pollutants.
12 Those discharges don't have to be current. So the fact
13 that it's legacy I don't think, you know, releases us of
14 the obligation to list. That's just my understanding of
15 the law. So, you know, PCBs obviously were discharged by
16 someone someplace if they're present there. So I think we
17 have a basis for a listing.

18 The question for me is whether the violation of
19 either receiving water objectives or of, you know, impact
20 on beneficial uses is sort of clear enough here to make
21 these listings.

22 BOARD MEMBER HOPPIN: Mr. Wilson, I have one more
23 question for you.

24 Both the previous speakers have mentioned that
25 they don't feel that the OEHHA document that was used to

1 establish the basis for this whole conversation was
2 intended to be used for the purpose for what we're using
3 it for, in fact specifically stated that it was not to be
4 used for that purpose. Would you comment on that, please.

5 SENIOR ENVIRONMENTAL SCIENTIST WILSON:

6 Certainly.

7 The numbers were published. We evaluated them.
8 As part of the evaluation when we developed the listing
9 policy, one of our recommendations was to establish these
10 numbers in the policy. But the Board decided, with good
11 reason, to put the criteria for what made a good guideline
12 in there, but allow the science to evolve and to use the
13 best available numbers. And I think that's good sense.

14 OEHHA has, you know -- I don't know if they're
15 here now. But they haven't objected to me about using
16 these numbers in our process. We've put these out widely
17 to a lot of different people to look at.

18 You know, there are disagreements when you use
19 these numbers. And this is the downside to being so
20 transparent, you know. You know what we use, and you
21 might disagree with it. But I'm looking for an
22 alternative to use. And I'm -- just about it.

23 BOARD MEMBER HOPPIN: To that point -- and not to
24 interrupt you --

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: No,

1 please.

2 BOARD MEMBER HOPPIN: -- if OEHHA has not
3 commented to the contrary but they originally stated that
4 that was not the intent of the data, it would occur to me
5 just as item slip through our fingers in this level,
6 possibly this is not something that OEHHA would have felt
7 compelled or been aware that they needed to respond to it.
8 Is that a possibility?

9 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Well, it
10 is a possibility. But the point here is, that their job
11 is to develop these consumption advisories. And we took a
12 conservative approach in evaluating fish tissue data. We
13 could have only relied on their advisories. But, you
14 know, they have trouble getting those out. There's just
15 been a few around the state, that are so bad, that they
16 have them. And we view this as a -- I hate to use the
17 word "precautionary," but it is, approach for placing
18 waters on the 303(d) list, because we feel that there's a
19 potential for human health impacts based on these levels.

20 CHAIRPERSON DODUC: It is a difficult issue
21 because I know there are -- there's just so many
22 pollutants, and we do not have the complete scientific
23 data to have standards and objectives for all of them.
24 And to the extent that we can, we do try to build upon the
25 work of others.

1 The question then becomes, on a specific issue,
2 whether it is appropriate. And I think, you know, the
3 Board had before looked at the issue of, for example,
4 using the public health goal as the value in certain
5 actions being taken by the regional water boards.

6 I do think -- I would hesitate to make a blanket
7 statement that would throw out the use of data and
8 information and numbers set by OEHHA or any other of
9 our -- they are the scientific regulatory body. But I do
10 appreciate that such use needs to be taken with care and
11 it has to be applicable to the matter before us.

12 So I think the question is, with respect to PCB
13 in these two water bodies, whether it is appropriate. And
14 we've heard that for one there is a municipal water use --
15 beneficial use, and for the other, even though it's not in
16 the basin plan, fishing is occurring and fish is being
17 consumed.

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It's an
19 existing use.

20 CHAIRPERSON DODUC: It's an existing use.

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It's an
22 existing use of the water body.

23 MR. THOMAS: I don't know who's eating carp.

24 BOARD MEMBER WOLFF: Well, actually that's the
25 question I was about to ask.

1 The data was in carp or the data was in a variety
2 of fish?

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: For Big
4 Bear it was -- for Elsinore it was carp. For Big Bear it
5 was split between carp and Largemouth bass. And most of
6 the bioaccumulation is in the carp.

7 And we -- you know, instead of throwing out data,
8 we included it and evaluated it in a conservative fashion.

9 BOARD MEMBER WOLFF: All right. Now, there are
10 people who eat carp. The question is: Are people eating
11 carp from Lake Elsinore or Big Bear Lake?

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I
13 literally cannot tell you that.

14 BOARD MEMBER WOLFF: Yeah, I know, I know. We
15 have no clear information on that but those who were down
16 there who say, no, they're not eating that.

17 BOARD MEMBER HOPPIN: Mr. Wilson, would it be
18 unusual that -- are you done?

19 BOARD MEMBER WOLFF: I'm done.

20 BOARD MEMBER HOPPIN: You want me to be quiet?

21 BOARD MEMBER WOLFF: No.

22 BOARD MEMBER HOPPIN: Would it be unusual or
23 would you -- would it mitigate your feelings at all that
24 PCB is not detected in the water column? Would that be
25 unusual if it was highly contaminated and, in fact, would

1 assume, given the fact that a carp was a bottom feeder,
2 that there would be some merit to the argument that it
3 could possibly be limited to a layer of silt or the
4 residual from carp that live even longer than I have?

5 SENIOR ENVIRONMENTAL SCIENTIST WILSON: You know,
6 these kinds of pollutants tend to accumulate in sediments.
7 You don't find high concentrations in the water column.
8 It's not unusual to find high concentrations in sediments
9 and nothing in the water column. But there's still an
10 impact to beneficial uses.

11 CHIEF DEPUTY DIRECTOR HOWARD: Just to further
12 that. I doubt if we have any PCB listings that are water
13 column related. They're all either fish or the sediment.
14 It's just the nature of that --

15 BOARD MEMBER BAGGETT: Yeah, we've listed abalone
16 shell for DDT. It's been listed for years.

17 BOARD MEMBER WOLFF: Could staff clarify what --
18 the basis for any of the other PCB listings in the state?
19 I mean we have others, I know. Are they always fish
20 tissue like this and they're always compared against this
21 OEHHA level, or are there other --

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In
23 general, there's a lot of fish tissue listings. There's
24 also sediment listings when it exceeds a sediment
25 guideline that's out there.

1 Like Tom said, I don't recall any water listings
2 for PCBs.

3 BOARD MEMBER WOLFF: But they're always based on
4 these sort of fish tissue, you know, levels from OEHHA,
5 are strictly regulatory and, you know, et cetera, et
6 cetera?

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
8 right. Again, and this is the downside of explaining what
9 we do. I'm showing --

10 BOARD MEMBER WOLFF: No, that's not a downside.

11 CHAIRPERSON DODUC: Thank you, gentlemen.

12 Any other comments on Santa Ana basin?

13 Seeing none.

14 It's now up to this Board to make a motion.

15 And I will move the Santa Ana Basin list with the
16 changes on this page.

17 BOARD MEMBER BAGGETT: Second.

18 CHAIRPERSON DODUC: Seconded by Mr. Baggett.

19 Any discussion?

20 BOARD MEMBER HOPPIN: Would you repeat your
21 motion, Madam Chair.

22 CHAIRPERSON DODUC: Just move the listing without
23 any change.

24 Discussion?

25 All --

1 CHIEF COUNSEL LAUFFER: And just to be clear, I
2 think what perhaps Board Member Hoppin was speaking with
3 respect to the staff proposal from earlier today, but it
4 seems like a long time ago now, did have a couple changes.
5 And that's what Chair Doduc is incorporating into her
6 motion.

7 CHAIRPERSON DODUC: Yes, with this change.
8 All in favor?

9 BOARD MEMBER WOLFF: I'll support the motion.
10 But I would like to direct staff in the next round, the
11 2008 round to think carefully about the bases for these
12 sort of fish tissue listings. You know, I'm a little
13 concerned about using the OEHHA number. Not enough to
14 vote against the staff on this one. But I'm a little
15 concerned about what numbers we're using as we go forward
16 for these types of things.

17 And I'd like to just be sure we have consistency
18 across regions, that when we use one type of number from
19 OEHHA, that we're always using other similar numbers from
20 OEHHA. I think this Board took action on recycled water
21 in L.A. and said, oh, the L.A. Board couldn't use OEHHA
22 numbers for salt -- or BHS -- somebody's numbers for
23 something. And I'd like to see consistency on the way
24 we're using these numbers from other agencies.

25 CHAIRPERSON DODUC: To the extent we can be

1 consistent.

2 CHIEF DEPUTY DIRECTOR HOWARD: Yeah. I only
3 have -- it's not really a concern. I agree with the idea
4 behind that. It's just that there are a vast number of
5 compounds out there for which we don't have water quality
6 objectives, but which narrative objectives are applied to
7 and put into permits and things like that based on these
8 other sources of information. And it's been an ongoing
9 policy issue from the discharger community especially,
10 that the Water Board should be much more circumspect about
11 doing that.

12 So it's a big issue and maybe one we should talk
13 about in more detail.

14 BOARD MEMBER WOLFF: We're in agreement. I'm not
15 suggesting we need to be more circumspect. I am
16 suggesting we need to be as consistent as possible as we
17 move forward, because in fact it is an issue there's a lot
18 of discussion around.

19 CHAIRPERSON DODUC: Okay. So with that, all in
20 favor?

21 (Ayes.)

22 CHAIRPERSON DODUC: Any opposed or abstain?

23 BOARD MEMBER HOPPIN: Opposed. I fail to see
24 where we were going to make any substantial environmental
25 gains with this TMDL. I remain concerned not over this

1 solely. But that as we load up the world with TMDLs, that
2 we're not going to really be able to alter the end result
3 anyhow. That frustrates me. So I will vote in opposition
4 to my colleagues.

5 CHAIRPERSON DODUC: Thank you.

6 Well not "thank you" but thank you.

7 (Laughter.)

8 BOARD MEMBER HOPPIN: I know what you meant by
9 "thank you".

10 CHAIRPERSON DODUC: All right. Colorado River,
11 please come up to speak on Item -- the Regional Board 7.

12 MR. ANGEL: Thank you but no thank you.

13 CHAIRPERSON DODUC: I'm sorry. I thought you
14 told me you were from San Diego. So I moved San Diego up.

15 MR. ANGEL: No, I just appear.

16 CHAIRPERSON DODUC: Okay.

17 MR. ANGEL: Jose Angel. I'm the Assistant
18 Executive Officer for the water board down there.

19 We're encouraged by the discussion on the All
20 American Canal and by the changes on the proposal from the
21 staff. And beyond that, as I point out to the staff,
22 other issues that go more to the fact sheets than the
23 actual resolutions. So we're able to also to address that
24 today.

25 Having gone to Fresno State also, I feel your

1 pain.

2 BOARD MEMBER HOPPIN: You understand?

3 MR. ANGEL: Yes. Besides that, I'll be happy to
4 answer any questions. And I may reserve some time to
5 answer some of the concerns that other speakers may bring
6 to your attention.

7 CHAIRPERSON DODUC: Thank you.

8 Welcome back. And thank you for staying with us.

9 MR. BRADSHAW: Sure. Sorry I spoke too early
10 there a little while back.

11 My name is David Bradshaw. I'm with the Imperial
12 Irrigation district. And I have a few concerns. And we
13 do first want to thank Mr. Wilson for reconsidering the
14 All American Canal.

15 And along those lines, we have an issue with
16 selenium And the Colorado River Board letter from Jerry
17 Zimmerman was turned in. I see it didn't quite make it to
18 this one sheet of revisions.

19 Also there was a letter from the Imperial
20 Irrigation District, a four-page letter. But I won't read
21 these. They've already been submitted by the timeline.

22 But the crux is that the irrigation district
23 would support Jerry Zimmerman's letter and asking that
24 this Board withdraw its recommendation to list the
25 Colorado River from Imperial Reservoir to the

1 California/Mexico border as a water quality limited water
2 body for selenium And selenium again, is -- this is a --
3 not a discharge issue. It's a natural occurring feature.
4 It's part of the landscape.

5 Again, we're with that same -- I don't know a lot
6 about fish tissue testing, but it's the same testing. Our
7 letter on page 4, section B talks about: "The five
8 samples used to support this listing are inadequate and
9 insufficient and must therefore be supplemented and
10 reanalyzed." So we recommend that that part would be
11 removed with selenium.

12 I would think it would cause quite a ripple
13 effect for the southern California water agencies. They
14 definitely would want to comment. And this water is
15 wholesale to water treatment. It's not a drinking water
16 after it gets into our All American Canal. No one's
17 drinking that water per se.

18 BOARD MEMBER BAGGETT: Yes, isn't the -- a number
19 of the canals are already listed around the Salton Sea for
20 selenium, as I recall, from about a day's worth of
21 testimony on ID transfer.

22 MR. BRADSHAW: That's correct.

23 BOARD MEMBER BAGGETT: And isn't the source of
24 that water the same?

25 MR. BRADSHAW: Yeah, I'm not sure exactly where

1 the source of the selenium is. Or the watershed --

2 BOARD MEMBER BAGGETT: Well, as I understand,
3 it's from western Colorado. So we could have an
4 entertaining discussion here. It's much like the west
5 land of our state. So I mean it is a byproduct of
6 irrigation. It is -- and the soil's native to those
7 soils. But it is a byproduct caused by non -- it
8 wasn't -- it wasn't used in that manner. It's very
9 unlikely you would notice it because it would be locked up
10 in the soils.

11 MR. BRADSHAW: Is that -- would it be considered
12 a discharge then?

13 BOARD MEMBER WOLFF: I think that's the challenge
14 we have, because we have the Central Valley impaired for
15 selenium, we have Salton Sea impaired for selenium.

16 CHIEF DEPUTY DIRECTOR HOWARD: Staff would
17 consider it a discharge -- a non-point discharge from
18 agricultural operations.

19 BOARD MEMBER WOLFF: Mr. Howard's an expert on
20 Kesterson, as I recall.

21 MR. BRADSHAW: So we're saying from agricultural
22 areas is where the selenium comes from?

23 BOARD MEMBER BAGGETT: I mean the challenge is
24 what do we do with it since it's coming from another
25 state. We could -- that's where our Executive Officer is

1 as we speak, at the Colorado Salinity Forum. We could
2 give her something to...

3 MR. BRADSHAW: Well, we would hope you'd consider
4 Mr. Zimmerman's comments. And we'd like to also reiterate
5 that.

6 As far as the All American Canal, would the web
7 page be updated any time -- on a certain timeline? I know
8 that the listing's still there, at least the group I work
9 with, as long as it's still there. No one's comfortable
10 hearing that it's coming off as far as the 303(d) listing.

11 CHAIRPERSON DODUC: Mr. Wilson.

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I will
13 update these web pages as soon as I can. We need to
14 change the list. We need to change our fact sheets. And
15 we'll update everything. I'll put a notice on the
16 website, if it's agreeable to you, that changes are being
17 made to many, many listings, and to just wait for the new
18 version.

19 BOARD MEMBER BAGGETT: But I think we should
20 clarify. It's not listed now, because the Board hasn't --

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We are
22 going to take it off.

23 BOARD MEMBER BAGGETT: -- we haven't passed a
24 resolution doing anything. It's a recommendation from
25 staff.

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: My
2 recommendation is to not list the All American Canal for
3 the constituents we --

4 BOARD MEMBER BAGGETT: He's talking about --

5 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Were you
6 talking about selenium?

7 MR. BRADSHAW: No, we're talking back to the All
8 American Canal, just the -- if I can go get a printout
9 like I've gotten today, it's still on there as a proposed
10 listing.

11 BOARD MEMBER HOPPIN: Now, trust us here.

12 (Laughter.)

13 BOARD MEMBER BAGGETT: It's a proposed. But
14 today we will vote. You will have --

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yeah,
16 it's not approved until it's voted on.

17 MR. BRADSHAW: Okay. Thank you for that.

18 Yeah, the last thing, I was a little shocked to
19 find out if a water body is delisted, you're looking for
20 comments on that as well? Because an earlier speaker was
21 talking about having an item removed and there were no
22 comments in the affirmative, so that -- and there was
23 someone from that regional board wanting to put it back
24 on. And this Board was considering putting it back on due
25 to the regional board comments. Is that a --

1 CHAIRPERSON DODUC: Every recommendation, whether
2 it's to list or delist, that the staff has proposed is up
3 for the Board consideration today. That is therefore open
4 for comments.

5 MR. BRADSHAW: Okay. Thanks.

6 I'm thinking in the future if one of these do --
7 another impaired body does come off the list, are you
8 looking for comments in the affirmative in that?

9 CHAIRPERSON DODUC: Correct.

10 MR. BRADSHAW: Okay. Thank you.

11 CHAIRPERSON DODUC: Thank you.

12 MR. ANGEL: Please indulge me, Chair Doduc. Just
13 a point of clarification.

14 I think Mr. Baggett is right. And as a matter of
15 consistency, we listed all the impaired body drains as
16 impaired for selenium, not just because what comes out of
17 state but also because of the agricultural practices in
18 the valley then do exacerbate the problem. So it is in
19 the runoff. And it's also in the -- and the Board may not
20 find it especially clear in the water transfer order, in
21 the previous 303(d) listings cycles anyway.

22 The other issue that I wanted to point out is
23 that we're also encouraged by the fact that the Board's
24 going to consider the TDS issue in a broader context,
25 because as far as the region is concerned it doesn't just

1 have implications of surface waters. There are sources of
2 drinking water that are also in groundwater basins that
3 are not at 500. People are perfectly using them for
4 drinking water purposes. But they may be within the lower
5 and the upper range. So we do take issue with whether or
6 not the number has to be at 500 or it can be within a
7 range between the lower and the upper limit.

8 Thank you.

9 CHAIRPERSON DODUC: Thank you.

10 Any other comments on Colorado River Basin?

11 MR. BIGLEY: Steve Bigley, Coachella Valley Water
12 District.

13 We definitely support staff's recommendation that
14 we heard today to remove the listing for the All American
15 Canal.

16 And I certainly can understand where the
17 confusion has come up with the use of recommended
18 secondary MCLs. The Department of Health has recognized
19 this confusion. And just this year they have adopted new
20 regulations regarding secondary maximum contaminant levels
21 to help clarify how they intend these MCLs to be used.
22 They clarified this with the language that these are
23 consumer acceptance contaminant level ranges. The lower
24 level of the range is perfectly acceptable for all uses of
25 drinking water municipal uses.

1 So there is no impairment when that lower level
2 has been exceeded. And whether or not when the upper
3 level has been exceeded -- we're not recommending that --
4 but that could be a more acceptable use of those
5 recommended MCLs for secondary standards.

6 So we definitely would encourage Board staff to
7 look at that new regulation. That should help them in
8 addressing this issue and give better support for how
9 you've looked at this issue and decided not to list these
10 water bodies.

11 We also support the staff recommendation that we
12 heard today to better designate the Coachella Valley Storm
13 Water Channel listing, which was an affected area of 69
14 miles. The channel's only 22 miles long and it has 17
15 miles with water. So we support staff's recommendation to
16 change that to 17 miles.

17 We do not agree with the proposed listing for
18 toxaphene on the Coachella Valley Storm Water Channel.
19 The listing identifies sediment for the matrix listed in
20 the lines of evidence. Yet the administrative record
21 contains no sediment data supporting the listing.

22 Results for over 18 years of water monitoring
23 that we have performed, submitted and submitted --
24 summarize and submitted to State Board staff, indicate
25 toxaphene is not present in the water segment.

1 Further, two of the three fish tissue samples
2 that are the only supporting evidence for this listing are
3 based on Red Shiner. Red Shiner is a popular bait fish.
4 And the use of those tissue tests may have been from fish
5 raised in farms where they're exposed to toxaphene known
6 to occur in contaminated commercial fish food.

7 It would be inappropriate to use bait fish with
8 unknown exposure history to support the proposed toxaphene
9 listing. And without fish tissue results from these Red
10 Shiner samples, these two fish, there is insufficient
11 evidence to meet the listing policy for toxaphene.

12 If you decide to approve this listing, the water
13 segment name and estimated affected site described in the
14 listing needs to be revised to match the supporting report
15 the water body needs to maintain taken from Lincoln Street
16 to Salton Sea. And the estimated size which would be
17 effected would be 2 miles, not 69 miles.

18 So if you decide to list, that correction would
19 have to be made.

20 Finally, we also agree with the comments from the
21 Imperial Irrigation District in regards to the listing for
22 selenium in the Colorado River. Although it only affects
23 those final 11 miles before the border, it's difficult for
24 the public to segment the perception of impairment that
25 comes with this type of listing. It's based on three

1 fish -- three out of five total fish samples. Again, the
2 fish tissue issue comes up.

3 And we believe a water body as important as the
4 Colorado River, used by 23 million people as a drinking
5 water supply, deserves more than five fish samples before
6 you are going to designate it as impaired.

7 CHAIRPERSON DODUC: Thank you. Please wrap up.

8 MR. BIGLEY: That's all I have. Thank you.

9 CHAIRPERSON DODUC: Mr. Wilson, would you please
10 respond.

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I need to
12 correct the statement that it was sediment. It's not
13 sediment. It's tissue. And all the data that we have is
14 for fish tissue.

15 There were three -- this is for toxaphene in the
16 Coachella Valley drain. There were three different fish
17 species used. I think it's appropriate to pare down the
18 listing to the two miles that has been described to us --
19 I think that's a good change -- and focus on -- you said
20 Lincoln street to --

21 MR. BIGLEY: Lincoln Street is a crossing of the
22 water body, to the Salton Sea.

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: To the
24 Salton Sea. I think that's a good modification of this
25 listing. And I would like to propose that

1 recommendation -- that change.

2 CHAIRPERSON DODUC: All right. Thank you.

3 Any offer comments on Colorado River?

4 MR. BRADSHAW: Real quick. I may have misspoke
5 earlier. David Bradshaw, Imperial Irrigation District.

6 In the Imperial Irrigation District the canals
7 are not listed at this time for selenium. The drains are,
8 and that's where the drain -- the water running off the
9 fields goes into the drains. But at this time our source
10 water -- this is our source water we're talking about --
11 that's coming in, and that's being impaired somewhere in
12 this -- you know, this other watershed in another state.
13 And that's why we're against that listing.

14 Thank you.

15 CHAIRPERSON DODUC: Thank you.

16 MR. BOLLAND: David Bolland, again with ACWA.

17 I just wanted to appreciate staff jumping on the
18 All American Canal situation. And actually I just wanted
19 to make my prepared statements, which I --

20 CHAIRPERSON DODUC: It benefited your 11
21 reservoirs.

22 MR. BOLLAND: Yes, yes, absolutely. That too.

23 And I just wanted to say, in my prepared
24 statements I did have some accolades for the staff and for
25 this long, long process that the staff has mounted for

1 years now to try to do a better job of listing water
2 bodies in California. And I want to say on behalf the
3 California Water Agencies, we really appreciate the effort
4 and the money, the time that's gone into this in
5 California to do a better job of doing this 303(d) listing
6 process. We think that the transparency and the
7 procedural approaches that are being used are something
8 that will do nothing but get better.

9 And we do -- a number of our agencies implied
10 that they had a lot of data that they didn't submit on
11 certain water bodies. I think now that it's more well
12 understood some of the implications are being listed, I
13 think you're going to get a lot more data through time
14 from all kinds of sources. And it will be a lot better
15 data. And through time I think we're going to get a
16 handle on water quality --

17 CHAIRPERSON DODUC: Mr. Wilson is jumping for joy
18 on the inside.

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Just
20 covering my eyelids.

21 MR. BOLLAND: Thank you.

22 CHAIRPERSON DODUC: Thank you very much.

23 All right. Mr. Angel.

24 MR. ANGEL: Chair Doduc, a last comment regarding
25 selenium. If the Board decides to do this, the Colorado

1 for selenium, we would hope that the Board could provide
2 the regional board with some guidance as to what exactly
3 which is to do in relationship to selenium.

4 Thank you.

5 CHIEF DEPUTY DIRECTOR HOWARD: Why don't we just
6 send a nasty letter to Colorado.

7 BOARD MEMBER BAGGETT: E-mail Celeste to break
8 the news tomorrow morning.

9 BOARD MEMBER BAGGETT: I have a question.

10 CHAIRPERSON DODUC: For?

11 BOARD MEMBER BAGGETT: For one of the staff.

12 On the selenium issue, you're proposing only from
13 Imperial Dam. What about above? There are diversions off
14 the Colorado above there. Is it not impaired above there?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I only
16 have the fish data from where we're proposing to stop --

17 BOARD MEMBER BAGGETT: So we don't have anything
18 from L.A. --

19 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I didn't
20 see anything from above there. If we had it, we would
21 make that recommendation. We just don't have the
22 information. We have Largemouth bass and that's what
23 it's -- it's a bioaccumulation issues. Sorry.

24 CHAIRPERSON DODUC: Questions, comments?

25 What is the Board's pleasure?

1 Besides to go home?

2 BOARD MEMBER WOLFF: I have a quick comment, a
3 comment with respect to the regional -- staff's question.

4 I don't feel as if the ability to fix an impaired
5 water body was relevant to the question of whether you
6 list or not.

7 You know, that's not sort of how the structure
8 works, you know. We don't even need to know who the
9 dischargers are or whether we can fix the problem. We
10 just need to know there's an impairment that resulted from
11 discharged pollutants and we've listed. And if you can't
12 figure out what the heck to do about it, it's going to be
13 on the end of your priority list, and we know how far away
14 from now that is. And that's how it will be. You know,
15 that's the world we live in.

16 So I can't help you with what to do about it.
17 But I think I'm still obligated to make the listing.

18 BOARD MEMBER BAGGETT: I would move the action.

19 I think it's different than the TDS issue -- I
20 mean the selenium issue. Selenium we'd know -- we know
21 the consequences of. I mean TDS is a taste. We're
22 talking about sort of -- I guess I'd call it floating MCL.
23 Since it's Colorado, it's a little different standard.

24 But we know it's not harmful or serious.

25 The selenium we do know. And it hits the fish

1 tissue. You know what it does. We've got all too -- very
2 real experience in this state with it.

3 And even if it's not a state problem, I think we
4 could -- like I think Gary just said, I agree with your
5 comments.

6 So I'd make a motion.

7 CHAIRPERSON DODUC: And let me be clear. The
8 motion, Mr. Baggett, is for the list with the written
9 changes the staff needs to make.

10 BOARD MEMBER BAGGETT: Taking All American Canal
11 off.

12 CHAIRPERSON DODUC: Yes, taking the All American
13 Canal off. And the verbal change that Mr. Wilson
14 committed to just now as well on a reach narrowing --

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Shorter
16 reach for -- yes.

17 CHAIRPERSON DODUC: The two miles --

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: -- for
19 the Coachella Valley Drain.

20 CHAIRPERSON DODUC: Coachella, thank you.

21 BOARD MEMBER BAGGETT: Going to have the water
22 rights attorneys --

23 CHAIRPERSON DODUC: Any other discussions?

24 BOARD MEMBER HOPPIN: You're going to be able to
25 thank me on this one.

1 CHAIRPERSON DODUC: Please.

2 Are you seconding or --

3 BOARD MEMBER HOPPIN: Yes.

4 CHAIRPERSON DODUC: A major motion was made by
5 Mr. Baggett and seconded by Mr. Hoppin, with my heartfelt
6 warm thanks.

7 All in favor?

8 (Ayes.)

9 CHAIRPERSON DODUC: Any opposed or abstain?

10 Hearing none, it's carried.

11 Thank you.

12 Does the court reporter need a break?

13 You're okay?

14 I think we can quickly move through this without
15 taking a dinner break. We only have a few speakers left.

16 So now we're on to the Central Coast.

17 And I should have two speakers.

18 MR. COLLINS: Good afternoon or good evening.

19 Kevin Collins, Lompico Watershed Conservancy. I'm also
20 representing the Santa Cruz Group of the Sierra Club.

21 There's a few different stream segments in Region
22 3 that were proposed. These are for listing and/or
23 delisting.

24 First I'm going to address the delisting
25 proposal. That's for Waddell Creek, the East Fork of

1 Waddell.

2 I've hiked Waddell for many years. This stream
3 drains Big Basin State Park. The state park sewage
4 treatment plant was flagged by Fish and Game in around --
5 in the early nineties as being a major discharger of --
6 well, you can imagine. And there was all kinds of algae
7 in the stream. The stream was listed. And now there's a
8 proposal to delist.

9 I've been looking at the stream for the last two
10 fall periods. And last year the East Fork was filled with
11 black globular algae. This year there was another kind of
12 algae on it. There's a very easy test there. You can
13 look at the West Fork, which is completely clean and it
14 looks like it's coming out of the wilderness area, which
15 it essentially is. The East Fork is still impacted.

16 And to quote from the letter -- another letter
17 someone submitted today:

18 "The existing narrative standards of impairment
19 occur when bio-stimulatory substances promote aquatic
20 growth and concentration that cause nuisance or adversely
21 affect beneficial uses."

22 So what I'm -- the point I'm making is that
23 regardless of whatever chemical samples may have been
24 taken to justify delisting, there's still quite clear
25 evidence of eutrophication in a stream, East Waddell. And

1 I'm objecting to the delisting of that stream. I think it
2 should be postponed until further investigation is
3 undertaken.

4 There were two other -- let's see -- four other
5 San Lorenzo River segments that were proposed for listing.
6 The main stem San Lorenzo and Lompico were both in the
7 first draft for pathogens. Both were removed. I don't
8 know the reason for this. I only found out about this
9 meeting after the 20th, or I would have submitted a letter
10 on this one.

11 Bean Creek and Bear Creek, which are also San
12 Lorenzo tributaries, are both severely sediment impacted.
13 They were both removed from the list for reasons that I
14 can't -- I don't have any access to.

15 And the Soquel Creek Lagoon -- Soquel is a stream
16 just south of the San Lorenzo -- it was proposed for
17 nutrients, pathogens and sediment. And it is also being
18 removed from consideration.

19 I'm objecting to those removals. But in general
20 I support the listing on San Vicente. San Vicente is a
21 very complex situation. It's being listed for turbidity.
22 The real problem is sediment. And I think it would be
23 more sensible to go ahead and list the stream for the
24 actual pollutant that we're talking -- that is the
25 problem, being sediment. There is major logging under --

1 and mining in that watershed.

2 Those are my comments. Thank you.

3 CHAIRPERSON DODUC: Thank you.

4 BOARD MEMBER WOLFF: I'm sorry. But Before we go
5 to the next speaker, I wonder if I could just ask. We
6 have a listing for turbidity proposed? I mean turbidity
7 is a condition again, not a pollutant.

8 SENIOR ENVIRONMENTAL SCIENTIST WILSON: No,
9 there's a -- there's a numeric water quality objective for
10 turbidity in the Region 3 basin plan. And that's what we
11 used. That's what we compared our information to.

12 BOARD MEMBER WOLFF: Well, that's the basis for a
13 listing for sediment, I would think.

14 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
15 correct.

16 BOARD MEMBER WOLFF: Okay. But we should be
17 listing it for sediment impairment as opposed to --

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We just
19 listed for what the objective said it was for. We could
20 change that listing.

21 BOARD MEMBER WOLFF: Yeah, I think we need to be
22 consistent here, that all the listings are for the
23 discharges of pollutant.

24 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I
25 understand.

1 BOARD MEMBER WOLFF: Otherwise, you know, we got
2 the algae earlier, we're going to be inconsistent with
3 that.

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I
5 understand.

6 We could go through each of those points -- like
7 we looked up Waddell Creek. Regional board requested it
8 be taken off the list. Fifty-four nutrient samples. None
9 of them exceeded their value that -- you know, the water
10 quality objective. So we think it's a pretty clear-cut
11 case for delisting. We weren't able to go through each
12 one of them as you spoke. I'm sorry. That was the first
13 one. What was the -- would you like to go through all of
14 them?

15 MR. COLLINS: The only comment I could make about
16 Waddell is that it's a state park and the impact to the
17 sewage treatment plant is most intense at one -- at the
18 end of summer. And then of course if you took a sample in
19 the winter, you're not going to get much of anything. So
20 I don't know anything about the samples that actually came
21 in. But there's still evidence of eutrophication in those
22 streams.

23 BOARD MEMBER BAGGETT: So it sounds like it's a
24 case where you'd have algae growing and we think we fixed
25 the cause and the algae's still growing?

1 MR. COLLINS: That's my contention, is the
2 algae's still there.

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
4 the problem with these natural systems. They're kind of
5 controlling themselves. And, you know, the regional board
6 thinks they controlled the nitrogen and they think it's
7 not a problem there. But it may still be. And that's
8 where these numeric nutrient imports come in that we're
9 developing. And they're a lot different than the existing
10 water quality objectives. They're a lot lower, and it's
11 going to change things around.

12 BOARD MEMBER WOLFF: So in this particular creek,
13 Waddell Creek, the Region 3 staff, they support delisting?

14 SENIOR ENVIRONMENTAL SCIENTIST WILSON: They
15 recommended it to us.

16 BOARD MEMBER WOLFF: They recommended the
17 delisting.

18 CHAIRPERSON DODUC: And what did they say about
19 the problem that remains?

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Jessie,
21 could you...

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I just
23 don't know. I don't have information what they say about
24 the problem that still remains.

25 BOARD MEMBER WOLFF: I think you do need to go

1 through the other water body that were asked.

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Come back
3 to the podium.

4 What was the second water body that -- the second
5 on your list? You had mentioned Bean Creek at one point.

6 MR. COLLINS: Well, a Bean and Bear are two
7 tributaries of the San Lorenzo. Bear is a quite large
8 one, probably about 23, 30 square miles.

9 BOARD MEMBER WOLFF: We just want to know what
10 you said they should be listed for.

11 MR. COLLINS: Well, they should be listed for
12 sediment. I've watched them stay incredibly turbid for
13 days on end after a storm. They're --

14 BOARD MEMBER WOLFF: Okay. That's --

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: We
16 haven't evaluated any information. We don't have any fact
17 sheets on that water body.

18 BOARD MEMBER WOLFF: I see. So there's no data.

19 So, sir, do you have any data on the -- or you
20 just -- you've observed them?

21 MR. COLLINS: I've observed them personally.
22 I've taken some grab sample turbidity that I submitted to
23 the regional board. But I don't have long-term records.

24 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The next
25 water body on your list?

1 MR. COLLINS: Was Bean. Bean is a tributary for
2 Zayante. Zyante is listed, so this is a sub-watershed of
3 Zayante. But both of them are in the San Lorenzo.

4 BOARD MEMBER BAGGETT: It seems the best course
5 may be to just direct these be specifically looked at next
6 month.

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'd be
8 happy to look at all of those.

9 BOARD MEMBER BAGGETT: Because we'll be back here
10 in two years. And if we don't have the data -- I mean you
11 hate to list something without -- but we can certainly
12 have them give the data. Starting next month we'll be --

13 CHAIRPERSON DODUC: -- starting over again.

14 MR. COLLINS: All right, granted. If he has
15 approval, I'll put it in continuous sediment -- suspended
16 sediment monitoring station up there.

17 BOARD MEMBER WOLFF: Also it's worth noting that
18 if Bean Creek is a tributary for the listed creek, which
19 is Zayante, then in the TMDL for Zayante, you know, they
20 can give a waste load allocator on -- I guess it's a load
21 allocation for sediment coming out of that tributary. So
22 they can address it within the existing list.

23 CHAIRPERSON DODUC: Thank you.

24 Will the next commenter please come up.

25 MS. YOUNG: My name is Susan Young and I'm from

1 COAST, which is Coastal Advocates for Small Town. It's a
2 group -- a community group based in Davenport, which is
3 adjacent to the San Vicente Creek. And I believe Mr.
4 Collins, you know, just discussed San Vicente Creek.

5 One of my points has already been addressed,
6 because I was wondering why it had turbidity listed when
7 it should be sediment. But it sounds like that's being
8 addressed already; is that correct?

9 And then the other thing is that it said:
10 "Potential Source: Source unknown." And I have -- and
11 you realize that we've been under boil water, so we have
12 to boil our drinking water and our cooking water all
13 during all the winter months because of the sediment in
14 the creek and the high turbidity which is caused.

15 And it says: "Potential Source: Source
16 unknown." And if I had known earlier -- because again we
17 were not noticed properly -- or we weren't noticed at all,
18 so we couldn't put anything in writing. However, I do
19 have a couple of letters that put the source of the
20 turbidity and the sediment straight at the cement plant,
21 which logs right next to this. It does timber harvest
22 plants over and over again. It's here in the banks of San
23 Vicente Creek.

24 And here's a letter dated June 19th, 2006, to the
25 Director of Forestry from the District Engineer, Thomas

1 Bolich B-o-l-i-c-h of the Davenport County Sanitation
2 District, dated June 19th.

3 And then he says, you know, "We sent a letter to
4 you last fall regarding this same timber harvest
5 application stating that because of the proximity of the
6 timber harvest to San Vicente Creek we had serious
7 concerns about erosion and soil stability during the
8 winter months that could occur due to timber harvest
9 operations." And then it goes on about that.

10 Here's a second letter. This is to the person
11 who's then the managing director I believe. I don't know
12 what his title is now, but Mr. Satish Sheth S-h-e-t-h of
13 Cemex, which conducts the timber harvest. And here Thomas
14 Bolich, the District Engineer from the Davenport County
15 Sanitation District in a letter dated August 31st, 2006,
16 says, "As you know, the Davenport County Sanitation
17 District was under a boil water order last winter and we
18 anticipate that will occur again this coming year. The
19 order is the result of the high sediment content of the
20 raw water at that time of year and the inability of the
21 District's water treatment plant to treat the water during
22 stormy weather periods," blah, blah, blah.

23 And then asks them to remove the sediment from
24 behind San Vicente dam and install a self-cleaning cyclone
25 separator to remove fine silt particles, and asked them to

1 do things.

2 So on the one hand they're asking the cement
3 plant to help fix the sediment in the water. And then in
4 the second letter the Department of Forestry is saying,
5 you know, this is what's causing it, is the -- you know,
6 all the roads that they build next to the creek in order
7 to do their logging.

8 And we've been having problems with the timber
9 harvest plans without, you know, proper monitoring.

10 Thank you.

11 And we're supporting the listing of it. This is
12 the final outcome of a list. We support the listing.

13 CHAIRPERSON DODUC: Thank you.

14 MS. YOUNG: Thank you.

15 CHAIRPERSON DODUC: Mr. Wilson.

16 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'm glad
17 you're supporting the listing.

18 I'm supporting the identification of the source
19 on our list, using -- the way I understand you would be to
20 use silviculture as the source of the problem.

21 MS. YOUNG: Silviculture?

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Forest
23 harvest silviculture, correct?

24 MS. YOUNG: Yes.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: May I

1 have the letter for our record?

2 MS. YOUNG: Well, can I have it back? I wanted
3 one and they weren't going to give it to me. And I
4 finally demanded it.

5 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I will
6 make you -- can I make you a copy and send it to you?

7 MS. YOUNG: Yes. I can give you copies of all
8 my --

9 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'll make
10 it before I leave tonight.

11 MS. YOUNG: Okay. Because we drove up to Santa
12 Cruz, with a bunch of noisy kids in the lobby.

13 (Laughter.)

14 SENIOR ENVIRONMENTAL SCIENTIST WILSON: They're
15 not so bad.

16 I think we should modify our recommendation,
17 change it from "source unknown" to silviculture.

18 CHAIRPERSON DODUC: Any other comments,
19 questions, copying requests?

20 BOARD MEMBER WOLFF: I know it's quite late. But
21 just to respond to the lady who just spoke. I'm sorry, I
22 didn't get your name.

23 But I think it might be worth your knowing, if
24 you don't know already, that the local regional board I
25 believe has the capacity to not approve timber harvest

1 plans and therefore to prevent timber harvest from taking
2 place. So --

3 MS. YOUNG: They never do that with cement. And
4 it's very powerful in our community.

5 BOARD MEMBER WOLFF: Have you spoken with the
6 regional board staff about it?

7 MS. YOUNG: Yes, we talk to them all the time.
8 I've gone to different meetings.

9 Kevin, you've gone to different meetings --

10 MR. COLLINS: We've filed an appeal of their
11 timber waiver, as a matter of fact.

12 BOARD MEMBER WOLFF: Oh, you did. All right.
13 Well, then we'll be considering your appeal.
14 Thank you.

15 CHAIRPERSON DODUC: Don't cringe, Mr. Lauffer.
16 All right. With that, any other questions,
17 discussion, motion, please?

18 BOARD MEMBER BAGGETT: I'll move, with the
19 clarification made that we identify the source.

20 CHAIRPERSON DODUC: As silviculture.

21 BOARD MEMBER BAGGETT: -- As silviculture.

22 And I think then, secondly, that we ask them to
23 look at these other creeks that were mentioned for the
24 next listing cycle.

25 CHAIRPERSON DODUC: Definitely.

1 I will second.

2 Mr. Blum.

3 STAFF COUNSEL BLUM: Yeah, I'm just seeking a
4 clarification. I think this was the one where you were
5 talking about sediment versus turbidity.

6 BOARD MEMBER BAGGETT: And sediment versus
7 turbidity.

8 SENIOR ENVIRONMENTAL SCIENTIST WILSON: You want
9 to make that change as well.

10 BOARD MEMBER BAGGETT: Turbidity's the monitoring
11 sediments.

12 CHAIRPERSON DODUC: All right. All in favor?

13 (Ayes.)

14 CHAIRPERSON DODUC: Any opposed or abstain?

15 Motion is carried. Thank you.

16 Two to go.

17 And thank you for staying and for providing us
18 with those comments.

19 San Francisco Bay Area. Comments, please.

20 MS. SELF: Hi. Thank you for the opportunity to
21 speak. This is Deb Self with Baykeeper.

22 I have a -- getting a little tired. And I will
23 do my best to summarize our comments. Of course they were
24 submitted recently and also January 31st.

25 So to summarize, first of all we want to thank

1 the Board staff for recommending the listing of the San
2 Francisco Bay for PAHs. We're excited about that.

3 And we would really like to encourage the State
4 Board to consider listing the San Francisco Bay for PBDEs.
5 We feel that there is sufficient evidence that has been
6 cited in this process. We cited a number of studies in
7 our January 31st letter, including studies by the San
8 Francisco Estuary Institute and other bodies on mussels
9 and invertebrates that are stationary. We feel like the
10 consequences of PBDEs -- it's an emerging pollutant, but
11 the health effects are pretty scary and bio-accumulative.
12 And we feel strongly that there's enough evidence and it
13 should be listed.

14 Secondly, we would like to encourage the state to
15 put on the list Kerker Creek for pyrethroids. Again, this
16 is a case where you feel like there is ample evidence of
17 contamination. And, by extension, even though there's not
18 a lot of specific evidence, that all Bay Area urban creeks
19 are likely to be similarly contaminated because of the
20 residential use of those pesticides and storm water
21 runoff.

22 We also would -- go into a slightly different
23 issue. But we feel strongly that Bay Area urban creeks
24 and the San Francisco Bay itself should be listed for
25 trash. We feel like there is good evidence for that,

1 because it really impairs both recreationists and fills in
2 the riffles and has an impact on fish, blocks migration
3 corridors and that kind of thing.

4 We understand that the San Francisco Regional
5 Board -- after the bay was put on the watch list in 2002,
6 the regional board went and collected a good amount of
7 data. A lot of that is in the swamp system, I believe.
8 And our understanding is that they were in favor of
9 listing the bay. But it's not on the proposed list.

10 And, finally -- oh, 24 seconds -- there are 22
11 water body and pollutant combinations that I won't list
12 that we feel like there -- the weight of evidence is
13 enough to consider them. And let me just see if I can get
14 to that page.

15 For example, Islais Creek for Endosulfan, Mission
16 Creek for Chlorpyrifos and mirex, San Leandro Bay for
17 selenium and DDT. And we have a whole section in our
18 comment letters. But feel like these impaired water
19 bodies shouldn't be kept off the 303(d) list just because
20 no appropriate evaluation guidelines have been set.

21 Those are my comments.

22 CHAIRPERSON DODUC: Thank you very much.

23 Mr. Wilson, let's start with San Francisco Bay
24 PBDEs.

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: PBDEs.

1 There is monitoring data out there. There's sediment
2 data. There's tissue data. I have no way -- I don't know
3 how to interpret that information in terms of beneficial
4 use impact.

5 OEHHA is in the process -- you know, they've
6 evaluated this information. And one of their findings in
7 their report -- I wish I had it with me today -- is to
8 develop a guideline so we can evaluate that information.
9 And I've really tried to list these water bodies for PBDEs
10 using the trends information. And, frankly, I can't make
11 sense out of it in terms of the listing policy.

12 It seems like it should be a listing. I just
13 can't get there with the information that's before -- that
14 we have.

15 CHAIRPERSON DODUC: What does OEHHA expect to
16 finish their guidelines?

17 SENIOR ENVIRONMENTAL SCIENTIST WILSON: They
18 don't have a date in their report. But I will call them
19 and find out for you.

20 But it's a very strong recommendation. I made a
21 presentation to the University of California scientists to
22 please help us understand this information. You know,
23 it's a very important issue. I can't deny it. I just
24 can't evaluate it carefully.

25 CHAIRPERSON DODUC: Urban creeks.

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Urban
2 creeks. Pyrethroids are an emerging pollutant throughout
3 the State of California. We have four listings right now.
4 They're in the Central Valley. I don't have the data for
5 San Francisco Bay Area. But I wouldn't be surprised in
6 the next listing cycle if we have a lot more listings
7 including those. I just haven't seen the information. I
8 haven't been able to evaluate it.

9 I'm sure it's going to pop up in southern
10 California as well.

11 BOARD MEMBER WOLFF: I should make a comment on
12 that.

13 We have a pesticide-related toxicity TMDL coming
14 to us that was previously adopted by the San Francisco Bay
15 Board, and it claims to address pyrethroids. So even if
16 we listed, they're going to say the TMDL's already been
17 adopted.

18 Now, it happens I voted against that TMDL, so I'm
19 not very confident that it will do anything much. But
20 that's what the answer will be, is that, you know, "Go
21 ahead and list. We've already adopt a TMDL."

22 And I should say, in fairness, every other member
23 of the San Francisco Board voted in favor of it because
24 they wanted to give it a chance. It involved doing some
25 things that I thought were not likely to solve the

1 problem. But other reasonable people thought that it was
2 a good place to begin. So I'm not trying to -- you know,
3 to say we're not going to solve the problem through the
4 TMDL. I'm just saying -- I'm trying to fill people in on
5 the background.

6 So whether we list Kerker Creek or not for
7 pyrethroids, it's not going to change what happens on the
8 ground with respect to implementation plans, the basin
9 plan and so forth, I don't think.

10 BOARD MEMBER BAGGETT: So we're going to get an
11 opportunity to decide how reasonable you are?

12 BOARD MEMBER WOLFF: Well, you're going to get --

13 BOARD MEMBER BAGGETT: Or unreasonable you are?

14 BOARD MEMBER WOLFF: That will be up to you.
15 Actually I'm -- when it comes before us, I do not intend
16 to vote against it. I intend to abstain on it, out of
17 respect for my fellow San Francisco Bay Board members. So
18 the three of you will get to do it.

19 BOARD MEMBER BAGGETT: Okay. You're going to
20 decide how reasonable or unreasonable we are.

21 BOARD MEMBER WOLFF: Something like that.

22 So that's with respect to pyrethroids. I think
23 there's already -- you know, it's not going to matter
24 whether we list it or not, fortunately.

25 Trash is next.

1 What do you think about trash, Craig?

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I've seen
3 a couple of pictures of some tissue in some trees next to
4 some of the creeks. I think we need a systematic view of
5 the trash in San Francisco Bay.

6 Mark Gold of Heal the Bay nailed it for us with
7 Compton Creek. We had some other, you know, pretty good
8 views of trash in southern California. I just haven't
9 seen the same level of information for San Francisco. I'm
10 not doubting it's a problem. I just need the evidence to
11 recommend that to you.

12 BOARD MEMBER BAGGETT: Yeah, I would agree. And
13 I think we need to come up with some quantifiable -- some
14 measure, because you could do this to a lot of California.
15 Maybe we should list it for trash. But I think we have to
16 have something to hang our hat on besides one picture.

17 SENIOR ENVIRONMENTAL SCIENTIST WILSON:
18 Photographs are not my favorite evidence, because
19 all you see in photographs are what the photographer wants
20 me to see, you know.

21 BOARD MEMBER BAGGETT: As I recall, we did --
22 what was the San Diego --

23 CHAIRPERSON DODUC: As a photographer, I object
24 to that.

25 (Laughter.)

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Very
2 good.

3 BOARD MEMBER BAGGETT: Was it in San Diego where
4 they actually came in and showed us how many tons of trash
5 they were taking out every weekend from one of the four
6 service campgrounds? And then they had pictures, but they
7 also had a quantifiable measure. I mean it was of how
8 much they were having to remove.

9 BOARD MEMBER WOLFF: I guess also as liaison to
10 that region I should also comment on something here as
11 well.

12 There are plenty pictures of the trash in the San
13 Francisco Bay Area and the creeks and on the shores of the
14 bay. Roger James, the former executive director, has made
15 a hobby of going around taking such pictures. And he's
16 presented them, you know, to the regional board in that
17 area. And it's a Storm Water Subcommittee Workshop at
18 which he presented them as well. And he thinks they ought
19 to have a trash TMDL. But the staff hasn't put that
20 forward.

21 So I'm not sure that the issue is a matter of
22 pictures or evidence. It's a matter of the prioritization
23 by the staff. And, unfortunately, Tom, who was here
24 earlier, has left, the planning director in the San
25 Francisco Bay Area. And so I'd be curious to hear what he

1 has to say.

2 So we could just list it.

3 (Laughter.)

4 BOARD MEMBER WOLFF: Or perhaps, more
5 appropriately, we could direct them, you know, to make a
6 definitive determination as to whether it should be listed
7 or not in the 2008 cycle. And I think that they'd have a
8 very difficult time not listing it if we directed them
9 to -- you know, to give us a definitive answer.

10 CHAIRPERSON DODUC: Ms. Self.

11 MS. SELF: I did have a follow-up question, Mr.
12 Wilson.

13 The data that we cited in our comments -- and I
14 just would like some direction about how we can encourage
15 our regional board -- is a draft report from 2005, a rapid
16 assessment method applied to waters of the San Francisco
17 Bay Region. I assume that that is part of what you saw
18 and feel like it's not enough.

19 Right. Okay.

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: This --
21 listings for trash are -- they're a matter of judgment.
22 And the ones that we've made, we've made under that
23 situation-specific weight of evidence. And we've found a
24 finding of impairment based on what these things look
25 like. For me, it's quite difficult. Mr. Baggett talked

1 about, you know, quantifying it in some way. That's quite
2 hard to do. In the last listing we tried to take the most
3 quantified study that I've ever seen on trash before the
4 Board, and it really didn't work out to support a listing
5 at that time.

6 This is very difficult issue from an evaluation
7 perspective to do it in a fair manner. So we're doing it
8 consistently throughout the state.

9 CHAIRPERSON DODUC: Thank you very much.

10 Next commenter please.

11 MR. FRAHM: Hi. My name is Tim Frahm, San Mateo
12 County Farm Bureau. I'm down in the coastal San Mateo
13 area. And I'm here to provide some input about the
14 potential of delisting a watershed, Pescadero Creek
15 watershed down in coastal San Mateo County.

16 Pescadero's the largest coastal watershed --

17 CHAIRPERSON DODUC: So are you opposing or
18 supporting the delisting?

19 MR. FRAHM: I'm suggesting that there's a
20 potential that we can delist. Right now the regional
21 board is contesting and not suggesting a delisting.

22 San Mateo is proud to have Pescadero in our
23 watersheds. It's the largest watershed between San
24 Francisco and San Lorenzo River down in Santa Cruz County.
25 It was listed in the '98 selection, listed for sediment

1 and sedimentation after a letter was received by
2 Department of Fish and Game suggesting that it and several
3 other streams on the Central Coast should be added or
4 could be added to the 303(d) listing in order to protect
5 coho and Steelhead anadromous fish habitat.

6 According to the regional board notes, there was
7 no data provided at that time by that letter or no data to
8 be analyzed to support that conclusion. But at that time
9 it was proper to have a consensus of opinion by
10 professionals, and that was the reason for the listing.

11 Since that time there's been several things that
12 have occurred in this watershed. The state facilitated a
13 319(h) grant, which accomplished the sediment source
14 transport habitat assessment for Pescadero watershed, as
15 well as Butano watershed. And my comments are limited to
16 Pescadero. They're two distinct watersheds with two
17 different ID numbers. And I'm just referring to
18 Pescadero, not making any reference to Butano.

19 Also in 2003, the regional board conducted their
20 year-long swamp monitoring up and down the watershed in
21 Pescadero. Also, stream assessments have been conducted
22 by the Department of Fish and Game since that '98 listing
23 and after the oh El Nio storms, the extraordinary storms
24 which we endured. And they have assessed the stream of
25 '99, 2001, '02, '03 '04, '05 and this year, in which they

1 did snorkel surveys, in which they have walked the
2 watershed. They've walked all of the tributaries and a
3 preponderance of the watershed, lacking only the very
4 lower part of the watershed which was assessed by the
5 sediment and watershed assessment 319 grant.

6 DFG and NOAA Fisheries in consultation in 2002,
7 apparently after assessing habitat conditions, decided to
8 reintroduce coho salmon into Pescadero Creek, a big step
9 forward for our creek. Ten thousand individual juvenile
10 cohos were introduced into the system. Since that time,
11 since that 2002 reintroduction of cohos, snorkel surveys
12 have been conducted by DFG to show that there are young in
13 year now existing in this creek, which has led to further
14 introduction of cohos this year, another 10,000 juveniles
15 introduced.

16 Since the listing originally was done by DFG
17 representation that the system may be impaired, but there
18 was no data, but subsequent surveys by DFG have led to
19 this partnership with NOAA to reintroduce the species, we
20 believe that there's evidence that perhaps we are not
21 impaired for sediment impairing that beneficial use for
22 the cold water rare and endangered species.

23 Regional board staff has demonstrated a lot of
24 knowledge about habitat requirements for these sensitive
25 species. But we believe that it's NOAA and Fish and Game

1 that's charged with the protection of not only the
2 species, the individuals, but the habitat associated.

3 Now, obviously I'm not a scientist or a geologist
4 and I can't speak to the intricacies of the law or
5 science. Really I'm just -- I'm a Farm Bureau guy, I'm a
6 practical guy. And it seems to me that if a water body is
7 impaired to the detriment of Steelhead and cohos, that the
8 agencies in charge of protection, reintroduction and
9 recovery of those species wouldn't be introducing them to
10 a system which may threaten them because of an impairment.

11 And the landowners kind of look at it like we're
12 getting hit by both sides of the sword. On one hand we're
13 told that the water is too impaired to support the fish;
14 on the other hand we're watching the introduction of the
15 threatened and endangered fish.

16 Delisting is a goal of our rural community. Our
17 rural community has stepped forward, facilitating access
18 to the scientists, to the fishery experts. We've been
19 building riparian fencing, we've been repairing gullies.
20 We think that we're achieving a voluntary compliance. It
21 would be a boon to our community to have recognition that
22 since the agencies believe that there doesn't seem to be
23 an impairment, at least Fish and Game and NOAA, that we
24 would hope that the State Board would agree.

25 I'm hoping that you will agree with us. We would

1 consider it a great achievement in Pescadero to delist
2 this water body. And we believe that DFG has developed
3 information since the original listing which can help you
4 lead to that conclusion.

5 CHAIRPERSON DODUC: Thank you. You have -- that
6 was very interesting. You captured all our interest at
7 6:30. That is pretty awesome.

8 MR. FRAHM: Thank you, Mr. Wilson.

9 CHAIRPERSON DODUC: Mr. Wilson, please address
10 this.

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Mr. Frahm
12 has come and talked to us a couple of times, we've talked
13 on the phone, sent e-mails. This is one of those issues
14 where we've used the site-specific weight of evidence to
15 keep a water body on the list.

16 The study that was performed under the 319 grant
17 was an excellent effort. It had a lot of pertinent data
18 on fish habitat. It had a lot of pertinent data on water
19 quality information.

20 The regional board -- one of my original
21 recommendations was to take this off the list. When I
22 talked to the regional board, they felt there was some
23 missing information in the record. And we have a line of
24 evidence in our fact sheets characterizing this
25 information, that for coho salmon they need additional

1 information before they would consider taking it off the
2 list.

3 The information that I have in hand says it's a
4 pretty good habitat for Steelhead.

5 CHAIRPERSON DODUC: What additional information
6 do they need?

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Just a
8 moment.

9 Although the Steelhead and trout run in both
10 creeks does not appear to be immediately threatened by
11 local extinction, run size is substantially reduced from
12 historical values by a variety of limiting factors,
13 including the lack of woody debris and substantial
14 increase in total in fine sediment supply.

15 That's the comment the regional board staff gave
16 me. And I accept it as their site-specific weight of
17 evidence to keep this on the list.

18 BOARD MEMBER WOLFF: And the impairment is for
19 sediment; is that correct?

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
21 correct.

22 BOARD MEMBER WOLFF: And so the regional board is
23 saying the sediment loads are still substantially above
24 the historical numbers, even though they're better and the
25 runs are healthier, they're still substantially above --

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: The
2 evidence shows that for Steelhead, the runs are good.
3 It's not at historic levels for coho, and the regional
4 board is asking for additional information and additional
5 work to get back to that. That's the situation.

6 CHAIRPERSON DODUC: Mr. Frahm.

7 MR. FRAHM: And I agree that that's the regional
8 board position. I would just like to resubmit that
9 Department of Fish and Game and NOAA Fisheries over the
10 last four years have introduced now 20,000 threatened
11 individuals into this watershed. And I can only suspect
12 they will only do that if they believe they are in
13 appropriate habitat and an unimpaired habitat. So that's
14 our contest.

15 Thank you.

16 BOARD MEMBER BAGGETT: I have no problem going
17 with our staff's recommendation on that one. I mean it
18 sounds like this is a significant weight of evidence
19 and --

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: My
21 recommendation --

22 BOARD MEMBER BAGGETT: It's a close call. I
23 would propose we delist it.

24 SENIOR ENVIRONMENTAL SCIENTIST WILSON: My
25 recommendation was to agree with the regional board. If

1 you'd like that reversed to base it on the data --

2 BOARD MEMBER BAGGETT: But your original
3 analysis --

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That was
5 quite a while ago, as we -- you know, we debated these
6 with the regional boards, and this is one where we went
7 the way that the regional board wanted based on their
8 weight of evidence.

9 BOARD MEMBER BAGGETT: And their fishery
10 biologists are equal to NOAA?

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I'm not
12 sure what the expertise of the staff I spoke to is.

13 BOARD MEMBER BAGGETT: This is the people in
14 charge of the ESA. I mean both -- and ESA.

15 BOARD MEMBER WOLFF: Yeah. But do we have a
16 letter on file from NOAA saying that, you know, it should
17 be delisted? Do we have any kind of statement from NOAA
18 or we just have -- I'm sorry, not to criticize your
19 statement. But, you know, the fact that they planted a
20 bunch of fish there doesn't necessarily mean that they
21 agree that the stream is fully restored.

22 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's a
23 great point.

24 MR. FRAHM: I can only say that I have heard that
25 from regional board staff, that Fish and Game and NOAA

1 Fisheries don't care about habitat, they plant fish
2 everywhere hoping that a few will return. And I can -- I
3 would contest that thinking more along the lines that if
4 they didn't think the fish were going to survive in that
5 habitat, then it is a -- then they're breaching the
6 Endangered Species Act. These are the folks that assess
7 habitats, sir.

8 BOARD MEMBER WOLFF: Thank you. I was trying to
9 raise the point though, do we have any submittals from
10 NOAA or from DFG with respect to this issue? And I'm
11 hearing staff indicating we don't. So with respect to
12 Board Member Baggett's point, I don't know where those
13 agencies stand.

14 CHAIRPERSON DODUC: Thank you, Mr. Frahm.

15 MR. FRAHM: Thank you.

16 CHAIRPERSON DODUC: Any other comments, San
17 Francisco Bay Area?

18 Seeing none.

19 BOARD MEMBER WOLFF: Could we return to the
20 comments made by Ms. Self earlier? She had a bunch of
21 comments. We only addressed the first three, I think
22 trash, pyrethroids --

23 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Islais
24 Creek, those comments?

25 BOARD MEMBER WOLFF: I'm sorry?

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Was it
2 Islais Creek that we didn't address?

3 BOARD MEMBER WOLFF: Well, no. There were 22 at
4 the end that she didn't have time to go through them. I
5 guess they're in their written submittal.

6 Did I understand that correctly, Ms. Self?

7 MS. SELF: Yes.

8 BOARD MEMBER WOLFF: There were 22 comments --
9 you know, I don't know when the letter was received. I
10 don't know if these questions were raised on Friday, you
11 know, at the deadline or whether they were raised months
12 ago. I don't want to just blow past them --

13 CHAIRPERSON DODUC: I'm sorry. The letter that I
14 have that's dated October 20th has the PBDEs, which we
15 discussed; the pyrethroids, that we discussed; the trash.
16 And then you had a comment about dioxin TMDL must be
17 completed before 2019. And then the final comment you had
18 was regarding the fact sheets and the responses to
19 comments frustrate public involvement.

20 I don't have anything --

21 MS. SELF: You know, I think that the really
22 detailed suggestions about these 22 water body pollutant
23 combinations is in the January letter. And we didn't
24 receive any specific --

25 SENIOR ENVIRONMENTAL SCIENTIST WILSON: This is

1 on Islais Creek and the San Leandro Bay --

2 MS. SELF: No, I can actually -- it's not
3 really --

4 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I can
5 respond. But I need to know.

6 BOARD MEMBER WOLFF: Oh, yeah, please do.

7 MS. SELF: Just a moment.

8 Here we go.

9 It's Islais Creek for Endosulfan; Mission Creek
10 for Chlorpyrifos and mirex; Oakland Harbor for
11 Chlorpyrifos, tributyltin, and PBDE; San Leandro Bay for
12 selenium and DDT; Payton Slough for -- pyrene, selenium
13 and PBDE, et cetera.

14 And then there are several more that have even
15 longer lists of chemicals.

16 SENIOR ENVIRONMENTAL SCIENTIST WILSON: All of
17 those mentioned on listings, except for the one for
18 PBDE -- except for that one are from the Bay Protection
19 and Toxic Cleanup Program database. In 2002, we put those
20 on the list because the Board made a finding that there
21 was an impact from those chemicals. When we went back and
22 looked at all of that data -- and, you know, it was
23 collected between about 1993 and 1998 -- when we went back
24 and looked at it all, pollutants like mirex were based
25 on -- those levels were elevated over other places in

1 California, not an impact on beneficial use. There's no
2 guideline for that. If we left it on the list, it would
3 never come off because there's no -- it's just elevated.
4 I don't have any information related to that for impacts.
5 Same for Endosulfan and DDT, selenium. All of those
6 chemicals were based on they were above background
7 concentrations. And so we backed off from those listings
8 in this go-around, applying the provisions of the State
9 Board's listing policy.

10 BOARD MEMBER WOLFF: So, in essence, you're
11 saying we have evidence of some sort of discharges in the
12 past of pollutants which cause elevated levels, but
13 there's no link from those to impairment of beneficial
14 uses?

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
16 correct.

17 BOARD MEMBER WOLFF: Thank you.

18 MS. SELF: I guess our main point would be that
19 if we're dealing with biocumulative toxic chemicals that
20 are known to have deleterious effects on aquatic organisms
21 and public health, that we take a somewhat more protective
22 approach and go on and develop evaluation criteria and
23 list them so we have something to start with.

24 Thank you.

25 CHAIRPERSON DODUC: Let me go back to actually

1 Mr. Frahm's very intriguing comments, and ask staff the
2 question going up to Dr. Wolff's question about NOAA and
3 Department of Fish and Game: What sort of coordination do
4 we do with those other agencies in developing the listing
5 when it comes to a fishery's beneficial uses?

6 SENIOR ENVIRONMENTAL SCIENTIST WILSON: In 1998,
7 those listings that were discussed were based on a letter
8 from the Department of Fish and Game to the regional
9 board, simply a letter, "You should list these because
10 we're worried about the habitat of these organisms."

11 CHAIRPERSON DODUC: But now that we're doing
12 one -- you know, we're doing an update, during the update
13 process were they contacted and asked for input now that
14 there is more information, now that they're reintroducing
15 coho hoe into the --

16 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I did not
17 contact them directly personally. And I can't speak for
18 the regional board.

19 BOARD MEMBER WOLFF: May I suggest that we might
20 address this one by directing staff to request those
21 agencies as to whether they would support delisting in the
22 period between our adoption of list today and EPA's
23 finalization? If both those agencies say, "You should
24 delist Pescadero Creek," then I would be -- support that.

25 But I simply don't know where those agencies

1 stand.

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: DFG and
3 NOAA -- NMFS?

4 BOARD MEMBER WOLFF: Yes, DFG and NMFS, because
5 the listing was based on their original request that they
6 be listed. Is that right?

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yes, Fish
8 and Game.

9 CHAIRPERSON DODUC: I would expand it beyond just
10 this particular listing as well. What other listings are
11 there that needs to be coordinated with DFG and NOAA?

12 BOARD MEMBER WOLFF: Well, that needs to be done
13 as we go forward, because we have this particular, you
14 know, request that has been made. And I'm respectful of
15 the request. I just don't want us to act in a way -- I
16 don't want us to assume what those experts at those
17 agencies believe.

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: So we'll
19 get a response from them on this listing and whether it
20 should be maintained based on the information that's
21 before you and the information that they have.

22 BOARD MEMBER BAGGETT: And if they concur, then
23 it should be delisted then.

24 BOARD MEMBER WOLFF: That's correct. If they
25 both say it should be delisted, then --

1 BOARD MEMBER BAGGETT: -- we delist it.

2 BOARD MEMBER WOLFF: Okay. We conditionally
3 approve that delisting. That would be my approach.

4 BOARD MEMBER BAGGETT: That's the motion.

5 CHAIRPERSON DODUC: For the next round,
6 coordinate with NOAA and DFG.

7 Are there any other appropriate listings out
8 there?

9 CHIEF COUNSEL LAUFFER: If I could just throw out
10 for Board Member Wolff's consideration. I understand the
11 conditional listing. What I would feel more comfortable
12 with since the Board is acting today is that we relay that
13 to U.S. EPA for them to consider in their -- because
14 they're the ones that ultimately have to adopt the list
15 under the Clean Water Act. I mean they're the final
16 arbiter, if you will. And so --

17 BOARD MEMBER BAGGETT: Like we've done with
18 beaches down south.

19 CHIEF COUNSEL LAUFFER: Like we've done with the
20 beaches. You know, we'll forward the data along to them
21 for their consideration.

22 BOARD MEMBER WOLFF: Well, except with respect to
23 the beaches, we in essence agreed to defer to EPA's
24 decision. I mean they're going to have the final decision
25 anyway. But we agreed to defer to their decision if they

1 work with our staff.

2 With respect to this I'm trying to do something a
3 little stronger, which is to say if both of those agencies
4 clearly say it should be delisted, then this Board is
5 endorsing delisting. EPA doesn't have to agree. That's
6 up to them. That's where I was going.

7 CHIEF COUNSEL LAUFFER: I understand where you're
8 going. The greater concern is just having Board actions
9 that are contingent upon subsequent actions of other
10 agencies. Because we don't know what conditions they
11 might put on that, and it creates more ambiguity about the
12 list. Whereas if, you know, we require the staff to relay
13 that on to U.S. EPA, it's clearer. You know, the Board is
14 approving it based on a conservative approach now with the
15 direction that, you know, NMFS or DFG weighed in
16 separately, U.S. EPA should give that significant
17 consideration.

18 BOARD MEMBER WOLFF: Not "or" but "and." I'll go
19 with it.

20 BOARD MEMBER BAGGETT: So you bring it back at
21 the next Board meeting then is what you would propose, in
22 three weeks. It shouldn't take long to get a letter out.
23 That would be better just for this one item and bring it
24 back for an affirmative vote if the letter be true.

25 CHIEF COUNSEL LAUFFER: Yeah, well, I guess I

1 just -- I don't have any sense of how long they would take
2 to kick out a letter. I mean there are options. You
3 could delist it and then for data submittal have U.S. EPA
4 add it if NMFS and DFG disagree. You could leave it on
5 and have EPA remove it -- recommend that EPA remove if DFG
6 and NMFS disagree.

7 STAFF COUNSEL BLUM: We really can't bring it
8 back in three weeks unless we can somehow get it on the
9 agenda for public notice.

10 CHAIRPERSON DODUC: Mr. Wilson.

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: You could
12 list with a footnote that if EPA finds through
13 consultation with the Department of Fish and Game and NMFS
14 that it should be taken off the list, that they should --
15 that EPA should take it off the list.

16 BOARD MEMBER HOPPIN: Couldn't do it conversely
17 and delist it?

18 SENIOR ENVIRONMENTAL SCIENTIST WILSON: You could
19 do it that way too. And it's really your call, how you
20 want to proceed on this. If you delist it, then EPA has
21 to put it on. And they might put it on by contacting NMFS
22 or not, right?

23 CHAIRPERSON DODUC: Yeah.

24 BOARD MEMBER WOLFF: I think I'd rather leave it
25 on the list and let EPA take it off. And the reason for

1 that is I'm trying to defer to the regional board staff.
2 I mean they may have already spoken to these agencies, you
3 know. I don't want to reverse their recommendation, but I
4 do want to open the door to someone else reversing their
5 recommendation.

6 BOARD MEMBER BAGGETT: I would concur with that
7 approach, with the footnote I think like Craig just
8 suggested.

9 CHAIRPERSON DODUC: Leave it for now?

10 BOARD MEMBER BAGGETT: Leave it free -- if they
11 can get -- in consultation with California Fish and Game
12 and National Marine Fisheries if EPA finds that they can
13 concur with the delist, then...

14 SENIOR ENVIRONMENTAL SCIENTIST WILSON: So the
15 conclusion is keep it on the list, with a footnote that if
16 EPA finds that DFG and NMFS think it should be removed,
17 that you would concur with taking it off the list?

18 BOARD MEMBER BAGGETT: Right.

19 CHAIRPERSON DODUC: Correct.

20 Any other discussion or -- was there a motion
21 made?

22 BOARD MEMBER WOLFF: Well, not quite yet.

23 Mr. Baggett, you've got something about trash or
24 you wanted to discuss trash here?

25 BOARD MEMBER BAGGETT: I don't think that's going

1 to be part of the motion. But I think at some point we
2 need -- there's two things that are becoming evident.
3 Maybe we should wait till we're totally done. But I think
4 two things that need -- one is the trash issue. We've
5 gone through it, as painful as it was, down south. And I
6 think we need to spend some time developing some criteria
7 and outside this process.

8 The second is I think we really do need to spend
9 more time with some of our other agencies, like Fish and
10 Game, and develop some relationship to be used throughout
11 this next round, with Fish and Game, NOAA Fisheries and
12 NMFS, just to sort of get their sense and their
13 involvement since they are responsible for those ESA
14 issues, and get their input, not just on the ESA issues
15 but on the exotics. I think the mussel issues are very
16 real. And if we can play a beneficial role in cleaning up
17 some of these species issues we've got around the state by
18 using Clean Water Act authority and reinforcing what
19 they're spending hundreds of thousands of dollars already
20 dealing with, I think it's a good thing for us to do, to
21 use the Clean Water Act to that end.

22 But I think we need to start having some dialog
23 with those agencies, probably at the board levels, some of
24 our staff and the Fish and Game director and so on, and
25 Steve Thompson from U.S. Fish and Wildlife, and see what

1 they consider are the high priorities. You know, like the
2 issue dealt with with the trout up in -- with the
3 cutthroat trout. There's a lot of interplay we should
4 have with those agencies, and we could have, and use our
5 collective powers to do good for the public and the
6 environment. But I think those dialogs, it was pretty
7 evident today, haven't been -- I don't know if it's
8 anybody's fault. We're just out on a different edge than
9 most other states are. And I think it's a new way of
10 looking at things maybe.

11 So that's my suggestion. That and trash and
12 maybe a couple Board member -- I don't how far you want to
13 go, Tam.

14 CHAIRPERSON DODUC: We have a session afterwards
15 to discuss Board member priorities and assignments, at
16 least according to our agenda.

17 I could write the minutes on that one.

18 BOARD MEMBER BAGGETT: With that, I would
19 move the recommendations with the changes to the footnote
20 and the change on the --

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON:

22 -- Pescadero.

23 CHAIRPERSON DODUC: -- Pescadero.

24 BOARD MEMBER HOPPIN: Second that.

25 CHAIRPERSON DODUC: Motion was made by Mr.

1 Baggett, seconded by Mr. Hoppin. And I'm so pleased with
2 myself. I can actually remember names at this time.

3 But --

4 BOARD MEMBER WOLFF: I'm going to keep us for a
5 few more minutes on a discussion on the motion.

6 CHAIRPERSON DODUC: Okay. Discussion.

7 BOARD MEMBER WOLFF: I generally like the motion,
8 but I'm not completely done with trash yet.

9 Is there any sort of direction -- this is a
10 question for staff, I guess. Is there any sort of
11 direction to the staff of Region 2 that we can make with
12 respect to next listing round with respect to their making
13 a positive determination as to whether a trash listing is
14 needed or not or to examine the creeks, or is that -- is
15 any such direction going to be essentially what they're
16 going to do anyway in the next round?

17 CHIEF COUNSEL LAUFFER: Well, You could certainly
18 make as part of the motion strong encouragement for Region
19 2 staff to closely evaluate trash issues throughout the
20 San Francisco Bay Area. It doesn't have any regulatory
21 effect, but it certainly conveys the sense of this Board
22 and -- largely, as you may have heard -- I think you were
23 at the All Chairs meeting during the time where a few of
24 the executive officers said, "Yes, when we hear those
25 directions, we march to them." And so that can certainly

1 be a component if that is some interest to this Board.

2 BOARD MEMBER BAGGETT: I think maybe something
3 that might be more efficient is -- we have the TMDL
4 Coordinators Council, which is the regional boards. We
5 have the EO's annual and monthly meeting. We also have
6 the regional board attorneys under the assistant counsel.
7 So I think if we asked the attorneys and the TMDL
8 coordinators to get together with our chief counsel and
9 then Craig and his staff and sit down and ponder how they
10 would approach this project -- I think it's statewide. I
11 mean I think we need to come up -- but that seems to be --
12 then they could bring something back for the workshop
13 maybe that we could discuss in the forum. But they put
14 together a proposal based on what the nine regional board
15 attorneys, coupled with their TMDL coordinators, coupled
16 with our staff, because they're the ones who deal with it
17 day in and day out, like you said. And Region 2 and
18 region 4 will probably have a lot of good input. But I
19 think -- I can tell you Mexicali there's a problem.
20 There's more than one river in this state, a water body,
21 that we could maybe play a role in cleaning up.

22 BOARD MEMBER WOLFF: So I was thinking of
23 directing the San Francisco Bay staff to do something
24 more -- paying more attention to, you know, perhaps the
25 trash listing in the next cycle. Board Member Baggett is

1 saying maybe let's direct the TMDL coordinating, or
2 whatever it's called, to examine that statewide. And
3 that's much more expansive. I don't personally have
4 knowledge of trash in all these other urban creeks around
5 the state. But I walked my dog before dawn on Cole Creek
6 this morning in the Bay Area and there's trash there.
7 Okay. So, you know, I'd like to see a little more
8 attention paid to it.

9 BOARD MEMBER BAGGETT: Take the train from Fresno
10 to Sacramento sometime, and just look out the windows,
11 man. It's amazing.

12 BOARD MEMBER WOLFF: Well, what does staff think
13 of a recommendation to these TMDL coordinators then to do
14 something or other with respect to the trash issue in the
15 next cycle?

16 CHIEF DEPUTY DIRECTOR HOWARD: Well, I think it
17 would be more effective if you were interested in San
18 Francisco Bay, in particular, to direct the regional board
19 to take a look at this issue. I mean you heard some
20 evidence in this round and you're interested in having
21 them review it.

22 Now, I mean if you really want us to get you
23 seriously into this, I'd suggest you do both. I mean if
24 we -- and, quite frankly, even without direction from the
25 Board to do both, after listening to the conversation here

1 I would ask the TMDL coordinators to discuss this issue
2 and maybe bring it up as an MCC agenda item. Because,
3 after all, it's appearing in many regions and we need to
4 get some consistency regarding methodologies that are
5 being employed to develop, you know, whether a trash TMDL
6 is appropriate, whether listing is appropriate.

7 So you can -- I'd suggest you do the San
8 Francisco Bay, and you could direct us to take this up in
9 other forums as well.

10 BOARD MEMBER BAGGETT: Can I amend the motion?

11 BOARD MEMBER WOLFF: So the maker of the motion
12 and the second, will you amend it to do -- to provide
13 direction both to San Francisco Bay staff --

14 BOARD MEMBER BAGGETT: Yes.

15 BOARD MEMBER WOLFF: -- and to our staff through
16 the TMDL Coordinating Committee.

17 CHAIRPERSON DODUC: All right.

18 BOARD MEMBER WOLFF: To pay more attention to
19 trash in the next cycle.

20 Now, "pay more attention" is not a precise enough
21 wording. From a legal perspective, what should we do
22 here? Help me. Chief Counsel.

23 CHAIRPERSON DODUC: We can do that.

24 I just received a note that the car garage is
25 going to close at 7. What does that mean? Do we all need

1 to move our cars?

2 BOARD MEMBER BAGGETT: Now, only if you have --
3 if you're a regular parker, like many of us, it's not an
4 issue. But if you pull out a ticket, the --

5 CHAIRPERSON DODUC: Any visitors.

6 So I think we need to stop --

7 BOARD MEMBER WOLFF: We need to wrap it up.

8 CHAIRPERSON DODUC: We need to wrap it up.

9 Mr. Lauffer, if you could do this like in 30
10 seconds, do it.

11 CHIEF COUNSEL LAUFFER: I was just going to
12 suggest that the coordinator systematically evaluate --
13 aggressively and systematically evaluate trash options in
14 the impaired water body listing program.

15 BOARD MEMBER WOLFF: I think we all had the true
16 former counsel in the L.A. Region. Aggressively and
17 systematically evaluate, we'll give that direction to the
18 TMDL coordinators and to the Regional 2 staff; is that
19 correct, maker of the motion?

20 CHAIRPERSON DODUC: Aye.

21 Secunder of the motion.

22 All in favor?

23 (Ayes.)

24 CHAIRPERSON DODUC: Any opposed?

25 Hearing none.

1 People, go move your cars. We will reconvene at
2 about 5 after 7.

3 (Thereupon a recess was taken.)

4 CHAIRPERSON DODUC: We saved the best for last.
5 North Coast Region.

6 Will speakers for the North Coast Region please
7 come up.

8 And I do see Mr. Levine and Ms. Self and others.

9 MR. ST. JOHN: I'm Matt St. John. I'm staff with
10 the North Coast Regional Board.

11 And I'm actually not here with a prepared
12 statement. But just if there were questions of
13 clarification regarding North Coast Board's position on
14 some of the Klamath related or any other recommendations
15 for the North Coast, I'm here to answer those.

16 CHAIRPERSON DODUC: How do you feel about trash?

17 MR. ST. JOHN: Luckily at North Coast Region we
18 haven't had to contemplate that one.

19 STAFF COUNSEL BLUM: There is no trash.

20 BOARD MEMBER WOLFF: Given the hour, I want to
21 introduce a note of levity, actually it's a serious bit of
22 levity. I'd like to recommend to Ms. Jines when we start
23 issuing performance rewards, we discussed a couple weeks
24 ago, that this gentleman get one for staying so late just
25 to answer questions.

1 CHIEF DEPUTY DIRECTOR JINES: All right.

2 CHAIRPERSON DODUC: I think he should be
3 nominated for a customer service award indeed.

4 (Applause.)

5 BOARD MEMBER WOLFF: And I'm being serious.

6 BOARD MEMBER HOPPIN: Maybe from that side of the
7 bench it just really looks like we need help.

8 (Laughter.)

9 MS. SMITH: I'm Michelle Smith from Humboldt
10 Baykeeper. And I wanted to thank the staff tonight for
11 making my job a little bit easier and hopefully getting us
12 out of here a little bit quicker.

13 I planned on trying to convince the Board to
14 reconsider staff's decision not to list Humboldt Bay as
15 impaired for dioxin. And as staff has made that
16 recommendation, I hope that the Board will adopt it
17 tonight.

18 Thank you.

19 CHAIRPERSON DODUC: Thank you very much.

20 Mr. Levine, thank you for staying as well.

21 I thank everyone for staying.

22 MR. LEVINE: Thank you for staying.

23 Al Levine for Coast Action Group, North Coast,
24 Mendocino County.

25 Before I get going into my region, I want to say

1 that on Pescadero Creek you took exactly the appropriate
2 action. You don't know what the responsible managing
3 agency's going to say and you should check with them,
4 because things may not be as represented.

5 I want to say that staff did a great job in
6 Region 1. There's basically very little to complain
7 about, maybe nothing.

8 CHAIRPERSON DODUC: Oh, let's stop there.

9 (Laughter.)

10 MR. LEVINE: You have some additional temperature
11 listings that have been added. And I believe they're
12 appropriate. And I want to remind Art that temperature is
13 not just a flow issue. Near stream ambient temperatures
14 are very important for temperature readings and so is
15 sediment filling also.

16 Laguna de Santa Rosa recommended for listing. I
17 wish that it wasn't forced on you by the EPA. I wish that
18 the State Board used the narrative bio-stimulation
19 objectives in the regional board basin plan as the basis
20 for listing. But I'll still take it anyway.

21 And I think it's important to state that while
22 the City of Santa Rosa left earlier today, but they
23 objected to listing and they are continuing to refuse to
24 acknowledge any responsibility for discharges that are
25 contributing to the nutrient bio-stimulatory problems in

1 the Laguna, as much as 43 tons of nitrogen per year. And
2 I think it's a bummer that they're in that place. And
3 that's even disregarding the nutrients that go in there
4 from storm water issues too, which might even be more.

5 And I want you to know there's a nuisance issue
6 going on there, that the bio-stimulants are producing an
7 invasive species growth which may encumber another listing
8 in the form of ludwigia, and it's a human health hazard
9 and it's a serious health hazard and nuisance vector for
10 West Nile Virus.

11 I think that the Klamath sediment listing
12 problems are going to get resolved, and I'm happy about
13 that.

14 So basically the one last thought I have is that
15 listing to my mind and my way of thinking or the argument
16 I would present, listing for all pollutants should be
17 acceptable and reasonable in that, let's say, in the case
18 of blue-green algae or another type of algae, when you
19 deal with the underlying causes, which would also be
20 listed nutrients or temperature or whatever was associated
21 with that, when they go away, whatever's causing the
22 problem goes away, then the algae problem goes away too.
23 And so you have not harmed anything by listing for, let's
24 say, algae which didn't have a discharger.

25 Thank you very much.

1 CHAIRPERSON DODUC: Thank you.

2 In Mr. Levine's comments I don't think I heard
3 any questions to which Mr. Wilson will need to respond.

4 MR. LEVINE: No.

5 CHAIRPERSON DODUC: Right?

6 Any other comments?

7 Seeing none.

8 Is there a motion on the North Coast matter?

9 BOARD MEMBER WOLFF: I want to make sure I
10 understood the first commenter. I believe you said that
11 you supported the staff -- the changed staff
12 recommendation to -- to maintain a listing or to delist
13 Humboldt Bay?

14 MS. SMITH: No, I want Humboldt Bay listed for
15 dioxin.

16 BOARD MEMBER WOLFF: And the staff agrees with
17 that or not?

18 MS. SMITH: Yes.

19 BOARD MEMBER WOLFF: They do?

20 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yes.
21 What I would like to list for is 2,3,7,8 TCDD equivalents,
22 which includes the penta, hexa and octa dibenzodioxins and
23 the penta, hexa and septa dibenzofuans. It includes all
24 of those as one listing.

25 MS. SMITH: Correct.

1 SENIOR ENVIRONMENTAL SCIENTIST WILSON: You're
2 good with that, right?

3 MS. SMITH: Yeah, That's exactly what we're
4 looking for.

5 BOARD MEMBER WOLFF: But the proposed listing was
6 circulated didn't have --

7 CHAIRPERSON DODUC: I am so impressed that you
8 remember that.

9 BOARD MEMBER WOLFF: Yeah, That was impressive.
10 But you're proposing little something different
11 than what was sent out for comment, is that right?

12 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Yeah,
13 completely different that was sent out for comments.

14 BOARD MEMBER WOLFF: Reversed, right.
15 All right. So I wanted to ask the fellow from
16 Region 1, how does Region 1 feel about that?

17 MR. ST. JOHN: I'll be honest, that I hadn't
18 reviewed the data in a detailed way. But from what I know
19 about it, we would support the listing and go along with
20 the State Board's recommendation.

21 BOARD MEMBER WOLFF: Boy, everyone gets so
22 congenial after 7.

23 (Laughter.)

24 BOARD MEMBER WOLFF: I'll move the list with this
25 one amendment -- you know, the originally proposed list

1 with this one change.

2 CHAIRPERSON DODUC: What change?

3 SENIOR ENVIRONMENTAL SCIENTIST WILSON: There's
4 no change from -- there's no change from this sheet, is
5 there?

6 BOARD MEMBER WOLFF: Oh, I'm sorry. It was taken
7 out earlier.

8 All right. So I'll move the amended list, the
9 staff recommendation for Region 1.

10 CHAIRPERSON DODUC: Okay. Instead of having the
11 interim motion and then a final motion, would you also
12 move adoption of the resolution?

13 BOARD MEMBER WOLFF: Yes, with all of the
14 component parts adopted on an interim basis previous
15 today.

16 CHAIRPERSON DODUC: Thank you.

17 Does that cover all the legal bases, Mr. Blum,
18 Mr. Lauffer?

19 STAFF COUNSEL BLUM: Yes, ma'am.

20 CHAIRPERSON DODUC: Okay. And I will second
21 that.

22 Before I take vote though, I do want to ask if
23 the regional board representatives, if they have anything
24 to add, since you're standing there?

25 MR. ST. JOHN: Yeah, I apologize.

1 CHAIRPERSON DODUC: Please.

2 MR. ST. JOHN: It's actually just a question of
3 clarification regarding the Klamath sediment listing. The
4 addendum doesn't indicate whether -- what reach of the
5 Klamath River is being recommended. And I was wondering
6 if they could clarify that here.

7 SENIOR ENVIRONMENTAL SCIENTIST WILSON: It's
8 identified in our fact sheet.

9 MR. ST. JOHN: So it's referring to the original
10 September 2005 --

11 SENIOR ENVIRONMENTAL SCIENTIST WILSON: That's
12 right. We're going back to where we were in September
13 '05.

14 MR. ST. JOHN: Okay.

15 CHAIRPERSON DODUC: Great.

16 So let's take a moment before we take a vote.

17 And I thank all of you for coming and staying,
18 and especially to thank the staff, Mr. Wilson, Mr. Blum,
19 your staff.

20 Do you wish to introduce any of your staff?

21 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I would
22 really just like to take a moment to introduce all the
23 people who worked on this.

24 Jessie Maxfield worked on Region 4, Region 1,
25 Region 5, like most of the regions.

1 Dorena Goding was the temperature and exotic
2 species person, and she worked on 3, 7 and 8.

3 Randy Yates, Regions 1 and 2. And he's our data
4 guy.

5 Robert Musial, 6 and 9, an engineer who's worked
6 on a variety of these issues and has helped with a lot of
7 the administrative materials that we've presented.

8 And a fellow who's not here who's in China right
9 now is Jeffrey Shu, who's worked for us for about four or
10 five months. And he's our data analysis geek. He's
11 fabulous.

12 So those are the five people, plus me, who worked
13 on this.

14 CHAIRPERSON DODUC: Well, thank you, all of you.

15 SENIOR ENVIRONMENTAL SCIENTIST WILSON: I left
16 out the most important person, the person with the most
17 history is Nancy Kapellas. And she is the person who
18 assembles the list for us. She takes all of our
19 recommendations and puts them altogether into something
20 that everybody sees. And she develops the maps for all of
21 these listings.

22 And I apologize, Nancy, forgetting you.

23 BOARD MEMBER BAGGETT: So if someone wants
24 something deleted or added, that's who they should really
25 talk to.

1 (Laughter.)

2 SENIOR ENVIRONMENTAL SCIENTIST WILSON: She's
3 very good. She will -- yes.

4 CHAIRPERSON DODUC: And, finally, a very, very
5 special thank you and acknowledgement to you, Mr. Wilson.
6 You've done a wonderful job, not only leading your staff
7 to get to this point in the project, but also in being
8 here and responding to all these questions now for well
9 over five hours.

10 SENIOR ENVIRONMENTAL SCIENTIST WILSON: Thank
11 you.

12 CHAIRPERSON DODUC: Terrific. Thank you so much
13 for doing it.

14 (Applause.)

15 CHAIRPERSON DODUC: Any other comments?

16 With that, I'll call for a vote.

17 All in favor?

18 (Ayes.)

19 CHAIRPERSON DODUC: Any opposed or abstain, at
20 the threat of death?

21 (Laughter.)

22 CHAIRPERSON DODUC: Hearing no, the motion is
23 carried.

24 Thank you, everyone.

25 (Thereupon the State Water Resources Control

Board meeting adjourned at 7:15 p.m.)

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1 CERTIFICATE OF REPORTER

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

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

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

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 9th day of November, 2006.

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