

Response to Comments

Clean Water Act Sections 305(b) and 303(d) 2018 Draft Integrated Report for the Colorado River Basin Region

Comment Deadline: October 30, 2019

Comment Letter/Email #	Date	Commenter	Affiliation
CRBC-1	10/14/2019	Rich Juricich	Colorado River Board of California
CRBC-2	10/28/2019	Rich Juricich	Colorado River Board of California
PVID	10/29/2019	David R Saunders	Palo Verde Irrigation District
CVWD	10/30/2019	Steve Bigley	Coachella Valley Water District
MWD	10/30/2019	Mic Stewart	Metropolitan Water District
IID	10/30/2019	Tina L. Shields	Imperial Irrigation District

Changes proposed in response to comments are incorporated into the final Staff Report dated November 8, 2019, unless otherwise noted.

Comment #	Comment	Response
CVWD-1	<p>“[T]he Staff Report ignores the Colorado River’s current attainment of Basin Plan standards for salinity....the applicable water quality standards for salinity in the Colorado River are set forth on page 3-6 of the Basin Plan and are based on the flow-weighted average annual numeric criteria for salinity (TDS) at three locations on the lower Colorado River. All the readily available data and information demonstrate that the Colorado River is currently meeting those water quality standards and is reasonably expected to continue to meet them. There is therefore no legal or factual basis to list the Colorado River as impaired for salinity.</p> <p>The Staff Report does not acknowledge either the existing water quality standard for salinity or the readily available information or data that demonstrates the Colorado River’s attainment of the applicable standards. Rather in a manner</p>	<p>This comment references the proposed addition of Total Dissolved Solids (TDS) and Specific Conductivity to the 2018 Clean Water Act section 303(d) list (303(d) List) for the segment of the Colorado River from Lake Havasu Dam to Imperial Dam. The draft Staff Report also specifies that the Colorado River Basin Water Board is considering listing the segment of the Colorado River from Imperial Reservoir to California-Mexico Border as impaired by Specific Conductivity. (See Pages 12-13 of the draft Staff Report.) In response to this comment, staff proposes removing the recommended listings for TDS and Specific Conductivity for the Colorado River.</p> <p>In the draft Staff Report, staff compared non-flow-weighted data obtained for the Colorado River to the “recommended” Secondary Maximum Contaminant Levels (MCLs) of 500 mg/L for TDS and 900 µS/cm for Specific Conductivity</p>

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	<p>contrary to both Section 303(c) of the CWA and the express prohibitions of the Listing Policy, the Staff Report proposes new or revised water quality standards for the Colorado River, specifically new standards for TDS and specific conductivity, that are improperly derived by selected the recommended levels included in Table 64449-B listing Consumer Acceptance Contaminant Level Ranges in Title 22 of the California Code of Regulations (§ 64449 et seq.). Paragraph (d) of this section in Title 22 states no fixed consumer acceptance criteria for salinity in Title 22, these consumer acceptance contaminant level ranges apply to finished water served by community drinking water systems and have never been adopted as water quality objectives by the Colorado River Basin Water Board. Attainment or impairment must be based only on the actual Basin Plan objectives, and not on recommended aesthetic thresholds, developed for treated drinking water, that have not been adopted as applicable water quality standards by the State and approved by the EPA.”</p>	<p>found in California Code of Regulations, title 22, section 64449. Given that the Colorado River has a municipal and domestic supply (MUN) beneficial use in the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan), staff used the Secondary MCLs for TDS and Specific Conductivity to interpret the narrative water quality objective in the Basin Plan for aesthetic qualities, specifically the narrative objective for objectionable color, odor, taste, and turbidity. While the Basin Plan does contain site specific objectives for salinity expressed as numeric objectives for TDS for various segments of the Colorado River, the objectives are expressed as flow-weighted averages. At the time the draft Staff Report with listing recommendations was released for public comment, the Colorado River Basin Water Board had only received non-flow-weighted data for the Colorado River, and staff was therefore unable to analyze or apply the flow-weighted, site specific objectives in the Basin Plan.</p> <p>Following the release of the draft Staff Report and public workshop on October 10, 2019, staff received flow-weighted data for the Colorado River. As a result, the Colorado River Basin Water Board now has the right type of data to compare to the site specific objectives for salinity in the Basin Plan. Based on staff’s analysis of the data provided, staff agrees that the Colorado River is in attainment of the site specific objectives and recommends removing the proposed listings for TDS and Specific Conductivity for the Colorado River from the draft Staff Report.</p> <p>Accordingly, the following changes will be made to the draft Staff Report:</p>

Comment #	Comment	Response
		<ul style="list-style-type: none"> • On Page 12, delete the references to “Specific Conductivity” and “Total Dissolved Solids” from Listing No. 5 “Colorado River and Associated Lakes and Reservoirs (Lake Havasu Dam to Imperial Dam).” • On Page 13, delete the reference to “Specific Conductivity” on Tentative Listing No. 3 “Colorado River (Imperial Reservoir to California-Mexico Border).” • On Page 22, delete the reference to “Specific Conductance” under “3. Colorado River (Imperial Reservoir to California-Mexico Border).” • Delete the data table and associated text on Pages 25-26 for Specific Conductivity at the Colorado River and Associated Lakes and Reservoirs (Lake Havasu Dam to Imperial Dam). • Delete the data tables and associated text on Pages 26-28 for Total Dissolved Solids at the Colorado River and Associated Lakes and Reservoirs (Lake Havasu Dam to Imperial Dam). • Delete the row for Total Dissolved Solids on Page 45 from “Attachment 3: Table of Water Quality Objectives/Criteria or Guidelines.” • Delete the row for Specific Conductivity on Page 44 from “Attachment 3: Table of Water Quality Objectives/Criteria or Guidelines.”

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		<ul style="list-style-type: none"> • Delete the Fact Sheet entries in Appendix A for both TDS and Specific Conductivity for the Colorado River (Lake Havasu Dam to Imperial Dam).
CVWD-2	<p>“[T]he Staff Report, contrary to the Listing Policy, proposes a new standard for manganese that is not part of the Basin Plan. As with the salinity standards proposed in the Staff Report, staff proposes a new manganese standard improperly derived from the secondary maximum contaminant levels in Title 22 of the California Code of Regulations. As with the new salinity standards, the proposed new manganese standard that is based on an aesthetic threshold that has not been adopted by the State or approved by EPA as the applicable water quality standard cannot form the basis of the proposed listing.”</p>	<p>This comment references the proposed addition of Manganese to the 303(d) List for the segment of the Colorado River from the Imperial Reservoir to the California-Mexico border. (See Page 12 of the draft Staff Report.) The Colorado River Basin Water Board intends to keep the listing recommendation for Manganese.</p> <p>In the draft Staff Report, staff compared data obtained for the Colorado River to the Secondary MCL of 0.05 mg/L (or 50 ug/L) for Manganese found in California Code of Regulations, title 22, section 64449. Given that the Colorado River has a MUN beneficial use in the Basin Plan, staff used the Secondary MCL for Manganese to interpret the narrative water quality objectives in the Basin Plan for aesthetic qualities¹ and chemical constituents.² The use of the Secondary MCL, which is a drinking water standard, to interpret the Basin Plan’s narrative objective is appropriate because this standard is protective of the MUN beneficial use, which includes drinking water supply. This evaluation guideline underwent peer-review during the adoption process and before becoming a regulatory standard for community water systems supplying drinking water to consumers.³</p>

¹ The narrative objective for “Aesthetic Qualities” in the Basin Plan states, “All waters shall be free from substances attributable to wastewater of domestic or industrial origin or other discharges which adversely affect beneficial uses not limited to...Producing objectionable color, odor, taste, or turbidity.”

² The narrative objective for “Chemical Constituents” in the Basin Plan states, “No individual chemical or combination of chemicals shall be present in concentrations that adversely affect beneficial uses.”

³ For additional information, please see the State Water Board’s webpage entitled “Drinking Water Notification Level for Manganese.” Available at: <https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Manganese.html> (as of November 8, 2019). Importantly, there are potential health concerns

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		<p>Using the Secondary MCL for Manganese to interpret the narrative water quality objectives for aesthetic qualities/chemical constituents is consistent with the State Water Board's <i>Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List</i> (Listing Policy).⁴ Section 6.1.3 of the Listing Policy states,</p> <p>Narrative water quality objectives shall be evaluated using evaluation guidelines. When evaluating narrative water quality objectives or beneficial use protection, the Regional Water Boards and the State Water Board shall identify evaluation guidelines that represent standards attainment or beneficial use protection. The guidelines are not water quality objectives and shall only be used for the purpose of developing the section 303(d) list.</p> <p>The Listing Policy provides that evaluation guidelines may be used to interpret narrative water quality objectives where the evaluation guideline is:</p> <ul style="list-style-type: none"> • Applicable to the beneficial use • Protective of the beneficial use • Linked to the pollutant under consideration • Scientifically-based and peer reviewed • Well described • Identifies a range above which impacts occur and below which no or few impacts are predicted. For

for high levels of manganese in drinking water based on the cited studies conducted by the U.S Department of Health and Human Services, the United States Environmental Protection Agency, and the World Health Organization.

⁴ Available at: <https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/020315_8_amendment_clean_version.pdf> (as of November 8, 2019).

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		<p>non-threshold chemicals, risk levels shall be consistent with comparable water quality objectives or water quality criteria.</p> <p>The use of the Secondary MCL as an evaluation guideline for the narrative water quality objectives for Manganese does not create a new water quality standard. The Listing Policy specifically states in Section 6.1.3, “[t]he [evaluation] guidelines are not water quality objectives and shall only be used for the purpose of developing the section 303(d) list.” Similarly, the Introduction to the Listing Policy states that narrative water quality objectives will not be translated “for the purposes of regulating point sources” and that the policy generally “applies only to the listing process methodology used to comply with the C[lean] W[ater] A[ct] section 303(d).”</p> <p>In response to this comment, the following changes will be made to the draft Staff Report:</p> <ul style="list-style-type: none"> • In the Fact Sheet for Manganese in Appendix A, a discussion of the narrative water quality objective for Aesthetic Qualities will be added. • In Attachment 2, change repeated references to “Water Quality Criteria/Objective” to “water quality objective/guideline” to clarify that some of the numeric limits used are evaluation guidelines under Section 6.1.3 of the Listing Policy based on narrative objectives and not themselves water quality objectives. • On Page 11, add a subsection “4” that says the following, “Other Parameters: In some instances,

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		<p>staff selected the California Secondary Maximum Contaminant Levels (MCLs) found in California Code of Regulations, title 22, section 64449 to protect the Municipal and Domestic Supply (MUN) beneficial use and to interpret narrative water quality objectives in the Basin Plan for Aesthetic Qualities and Chemical Constituents.”</p>
CVWD-3	<p>“[C]ontrary to the references cited on page 44 of the Staff Report, there is not a secondary maximum contaminant level for sodium. Nor has California’s Office of Environmental Health Hazard Assessment (OEHHA) ever established a Public Health Goal (PHG) or Notification Level (NL) or issued any other health advisory for sodium. The proposed new water quality standard used in the Staff Report for sodium (20 mg/L) is based on a non-binding recommendation EPA published in a 2003 Drinking Water Advisory document (EPA-822-R-03- 006). In that same document, EPA states that: ‘a Drinking Water Advisory is not an enforceable standard for action...They are not to be construed as legally enforceable Federal standards.’ EPA also warned that: ‘this value was developed for individuals restricted to a total sodium intake of 500 mg/day and should not be extrapolated to the entire population.’ In accordance with Section 303(c) as well as the document on which the Staff Report is based, there is no legal or factual basis for the proposed listing.”</p>	<p>In response to this comment, staff proposes removing the listing recommendation for Sodium for both the Colorado River (Imperial Reservoir to California-Mexico Border) and Lake Havasu.</p> <p>The rationale for the previous recommendation to list the Colorado River (Imperial Reservoir to California-Mexico Border) and Lake Havasu for Sodium was based on the following: Table 2-2 of the Basin Plan indicates that beneficial uses of the Colorado River and associated lakes and reservoirs (which includes Lake Havasu) include municipal and domestic supply (MUN). Per the United States Environmental Protection Agency’s (USEPA) <i>2012 Edition of Drinking Water Standards and Health Advisories</i> (EPA 822-S-12-001), the health advisory for Sodium for individuals on a Sodium-restricted diet is 20 mg/L. This evaluation guideline was used in interpreting the narrative water quality objective for Aesthetic Qualities associated with the MUN beneficial use in the Basin Plan, as allowed per Section 6.1.3 of the Listing Policy. However, the reference in Attachment 3 on page 44 of the draft Staff Report to the Secondary MCLs as the water quality guideline for Sodium was in error.</p> <p>The rationale for removing the recommendation to list the Colorado River (Imperial Reservoir to California-Mexico</p>

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		<p>Border) and Lake Havasu for Sodium is based on the following: As the response to comment CVWD-1 explains, staff removed the listing recommendations for TDS and Specific Conductivity for the Colorado River. Because Sodium is a component of TDS, and since the Colorado River and associated lakes such as Lake Havasu have site specific water quality objectives for salinity expressed as TDS, it is more appropriate to treat the Sodium listing recommendation for the Colorado River (Imperial Reservoir to California-Mexico Border) and Lake Havasu similar to the listing recommendations for TDS and Specific Conductivity for the Colorado River.</p> <p>Accordingly, the following changes will be made to the draft Staff Report:</p> <ul style="list-style-type: none"> • On Page 12, delete the references to “Sodium” from Listing No. 4 “Colorado River (Imperial Reservoir to California-Mexico Border).” • On Page 12, delete the references to “Sodium” from Listing No. 10 “Lake Havasu.” • Delete the data table and associated text on Page 25 for Sodium at the Colorado River (Imperial Reservoir to California-Mexico Border). • Delete the data table and associated text on Pages 34-36 for Sodium at Lake Havasu. • Delete the row for Sodium on Page 44 from “Attachment 3: Table of Water Quality Objectives/Criteria or Guidelines.”

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		<ul style="list-style-type: none"> • Delete the Fact Sheet entries in Appendix A for Sodium for the Colorado River Imperial Reservoir to California-Mexico Border) and Lake Havasu.
CVWD-4	<p>“If approved, the 303(d) listing would establish new de facto water quality objectives for salinity....[and] would vitiate the carefully negotiated standards, developed by the Colorado River Basin Salinity Control Forum, that were approved by EPA and all seven states adjoining the river (including California). This unilateral action by the Regional Board will adversely affect California’s long-standing cooperative relationship with the other six states that share access to the Colorado River.”</p>	<p>The listing recommendations for TDS, Specific Conductivity, and Sodium will be removed for various segments of the Colorado River and Lake Havasu; please see the responses to comments CVWD-1 and CVWD-3.</p>
PVID-1	<p>“Palo Verde Irrigation District (PVID) joins the letter from Steve Bigley of Coachella Valley Water districted dated October 30, 2019. In particular, PVID agrees that the proposed listing of the Colorado as impaired is inconsistent with the Clean Water Act, the Environmental Protection Agency regulations, and the Listing Policy. Accordingly, PVID requests that the proposed listing for salinity (TDS and EC), sodium, and manganese be removed.”</p>	<p>Please see the responses to comments CVWD-1, CVWD-2, CVWD-3, IID-4, and IID-6.</p>
MWD-1	<p>“[T]he Regional Board’s rationale for proposing to list Lake Havasu as impaired for sodium is unsubstantiated. On page 34 of the Staff Report, the Regional Board cites that 44 out of 44 samples exceeded the water quality objective for the Municipal and Domestic Supply (MUN) beneficial use code of 20 mg/L for sodium. As explained above, there is no 20 mg/L water quality objective for sodium neither in the Basin Plan nor under state or federal law. Thus, Lake Havasu should not be listed as impaired for sodium.”</p>	<p>Please see the response to comment CVWD-3.</p>

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MWD-2	<p>“...Metropolitan is a member of the Colorado River Basin Salinity Forum. Consistent with criteria adopted by USEPA in conjunction with the Colorado River Basin Salinity Control Forum, the Colorado River Region Basin Plan adopted numeric criteria for TDS at Hoover Dam (723 mg/L), below Parker Dam (747 mg/L), and at Imperial Dam (879 mg/L). In addition, the Colorado River Basin Salinity Control Forum has supported numerous salinity control measures preventing approximately 1.3 million tons of salt from reaching the Colorado River and resulting in a 100 mg/L long-term reduction in TDS. By establishing a 303(d) listing for sodium, the Regional Board is ignoring decades of collaborative work by the Colorado River Basin Salinity Control Forum in controlling TDS along the Colorado River and the established TDS criteria in its own Basin Plan.”</p>	<p>Please see the response to comment CVWD-3.</p>
CRBC-2	<p>“[T]he [Colorado River] Board [of California] believes that adequate standards are in place for the Colorado River through the continued implementation of the Colorado River Basin Salinity Control Program, as administered by the seven Basin States Salinity Control Forum, and the seven Basin States and Federal agencies Advisory Council. Additionally, the Board asks that you consider comments submitted by the Coachella Valley Water District, Imperial Irrigation District, The Metropolitan Water District of Southern California, and the Palo Verde Irrigation District; specifically those portions of those comments addressing the water quality standards of the mainstream Colorado River and its reservoir system.”</p>	<p>Please see the responses to comments CVWD-1, CVWD-2, CVWD-3, and IID-4.</p>
CRBC-1	<p>I am most interested in the next steps for the proposed TDS TMDL for the Colorado River. Specifically, I am interested in the following questions:</p>	<p>Please see the response to comment CVWD-1. Because the Colorado River Basin Water Board intends to remove the listing recommendation for TDS for the Colorado River</p>

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	<ul style="list-style-type: none"> • How will the TMDL process consider the existing seven-state regulatory program in place for the Colorado River through the Salinity Control Forum? As you know, this program has been in place since the early 70's and is focused on improving salinity conditions in the Colorado River above Imperial Dam. Salinity below Imperial Dam is managed through actions under the treaty with Mexico. • How does the TMDL process consider background water quality? USEPA has identified that almost two thirds of the salt load of the Colorado River above Hoover Dam comes from natural sources. The Salinity Control Forum has projects in place to manage these natural sources of salt to the river. • Once established, how will the Regional Board implement the Colorado River TMDL? Is this done through NPDES permits or other waste discharge requirements? As part of the draft 2020 Triennial Report for the Colorado River Salinity Control Program, we did not identify any NPDES permits from California for discharges to the Colorado River.” 	<p>(Lake Havasu Dam to Imperial Dam), no Total Maximum Daily Loads (TMDLs) will be necessary for this pollutant.</p> <p>The process for addressing impaired water bodies is described in detail in the State Water Board’s <i>Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options</i>, dated June 2005 and adopted via Resolution 2005-0050 (Impaired Waters Policy).⁵ There is also an accompanying guidance document entitled <i>S.B. 469 TMDL Guidance: A Process for Addressing Impaired Waters in California</i> (Impaired Waters Guidance).</p> <p>As outlined in the Impaired Waters Policy, regional water boards are not required to adopt redundant regulations when they determine that another regulatory body is adequately addressing a water quality problem. (Impaired Waters Policy, p. 6.) In considering whether to adopt a TMDL for the Colorado River for a particular pollutant impairment, the Colorado River Basin Water Board would take into account any existing regulatory activities by third parties. If the Colorado River Basin Water Board were to determine that a program being implemented by another regulatory entity is adequate to correct the impairment, it could potentially rely upon that program. (See <i>id.</i>)</p> <p>If a TMDL were developed for a pollutant for the Colorado River, the TMDL would address all sources of the pollutant, including by taking into account background water quality. Typically, the TMDL consists of waste load allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background, and a margin of</p>

⁵ Available at: <https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/iw_policy.pdf> (as of November 8, 2019).

Comment #	Comment	Response
		<p>safety. The WLAs and LAs would be implemented through different permits and perhaps other regulatory mechanisms. If there were no point source discharges to the waterbody, then no WLAs would be assigned.</p> <p>Additionally, it is worth noting that if water quality standards are not being achieved because the applicable standards are not appropriate, an appropriate regulatory response may be to correct the standards through mechanisms such as use attainability analysis (UAA), a site specific objective (SSO), or other modification of the water quality standard. (Impaired Waters Guidance, p. 1-4.)</p>
IID-1	<p>“<u>Sodium ‘exceedances’ below Imperial Dam</u>: Staff concludes that all lower Colorado River water samples it analyzed exceeded water quality objectives for sodium based on comparison to a 20 mg/L value. According to the Staff Report, this value is derived from: (1) the Secondary Maximum Contaminant Levels (‘MCLs’) set forth in 22 CCR § 64449, and (2) Office Environmental Health Hazard Assessment (‘OEHHA’) health advisories. These references and/or goals are inappropriate[.]”</p>	<p>The citation to the Secondary MCLs for Sodium was in error. Please see the response to comment CVWD-3.</p>
IID-2	<p>“<u>Specific Conductivity and TDS ‘exceedances’ above Imperial Dam</u>: Staff concludes that Colorado River water above Imperial Dam is impaired based on (1) a 900 µS/cm Specific Conductivity WQO; and (2) a 500 mg/l TDS WQO. As noted by Staff, both these inapplicable ‘water quality objectives’ are derived from Secondary MCLs. However, ...neither of the standards included in the Staff Report are incorporated into the Basin Plan as applicable water quality standards by which impairment determinations can be made.</p>	<p>Please see the response to comment CVWD-1.</p>

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	<p>...IID respectfully objects to the Staff Report's determination of impairment for Specific Conductivity and TDS, and requests Staff to re-evaluate the impairment determination based on site-specific water quality objectives properly adopted into the Basin Plan."</p>	
IID-3	<p>"Staff's conclusion regarding impairment for Manganese is based upon the same faulty premise...that the appropriate value to compare Colorado River data to is a Secondary MCL. The Staff Report states that the recommendation for Manganese impairment is based on the 'Municipal & Domestic Supply Water Quality/Objective' of 50 µg/L. However, this value is derived from the Secondary MCLs set forth at Title 22, Section 64449.... this is an inapplicable value for use in determining impairment under the Clean Water Act's program, as this Secondary MCL has never been adopted as an applicable water quality objective. For this reason, IID recommends removal of Manganese from the proposed 303(d) list for the Colorado River."</p> <p>"Footnote 23...If the Regional Water Board is attempting to translate any narrative water quality objectives through the Staff Report and the proposed listing [for Manganese], IID objects."</p>	Please see the response to comment CVWD-2.
IID-4	<p>"The Listing Policy...requires use of a minimum sample size of 26 to place a water quality segment on the section 303(d) list for conventional or other pollutants. However, Staff proposes listing the Colorado River as impaired based on an insufficient number of samples for Manganese (6 samples), Sodium (6 samples), and Specific Conductivity (11 samples). Furthermore, the proposed listing must be supported by an adequate number of</p>	<p>This comment misreads the sample size requirements in the Listing Policy; the sample size for each of the pollutants identified is sufficiently large for listing. For conventional, non-toxicant pollutants, Table 3.2 of the Listing Policy requires listing of a particular pollutant if the number of exceedances is equal or greater than "5" when there is a sample size of "5 – 30." In explaining the application of the</p>

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	<p>exceedances based on specific criteria established by the State. The cursory analysis included in the Staff Report suggests that Staff has not yet performed the type of rigorous analysis anticipated by EPA and the State.”</p>	<p>binomial test to a sample size smaller than 26, the Listing Policy states,</p> <p>Application of the binomial test requires a minimum sample size of 26. The number of exceedances required using the binomial test at a sample size of 26 <u>is extended to smaller sample sizes.</u></p> <p>Similarly, for toxicant pollutants, Table 3.1 of the Listing Policy requires listing of a particular pollutant if the number of exceedances is equal or greater than “2” when there is a sample size of “2 – 24.” In explaining the application of the binomial test to a sample size smaller than 16, the Listing Policy states,</p> <p>Application of the binomial test requires a minimum sample size of 16. The number of exceedances required using the binomial test at a sample size of 16 <u>is extended to smaller sample sizes.</u></p> <p>The use of a smaller sample sizes than typically permissible under the binomial test was explicitly contemplated by the State Water Board and selected in “Issue 6E: Minimum Sample Size” in the Final Supplemental Environmental Document⁶ for the Listing Policy and in the Response to Comments in Appendix B⁷ of that document starting at Page B-60.</p> <p>The sample size for each of the pollutants identified in the comment exceed the required minimum sample size. Manganese is a toxicant pollutant (because it is a metal –</p>

⁶ Available at: <https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/ffed_093004.pdf> (as of November 8, 2019).

⁷ Available at: <https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/ffed_appxb093004.pdf> (as of November 8, 2019).

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		<p>see Section 7 of the Listing Policy), so only two samples are required per Table 3.1. Sodium and Specific Conductivity are conventional pollutants, so only five samples are required per Table 3.2.</p> <p>Please also see generally the responses to comments CVWD-1, CVWD-2, and CVWD-3.</p>
IID-5	<p>“The Staff Report’s recommendations regarding the Colorado River cannot be validly adopted as the Regional Water Board is seemingly adopting new water quality objectives for the Colorado River outside the standards-setting process, and therefore has failed to substantively consider the factors set forth in Water Code section 13241. The Staff Report and proposed listing appear to serve as a mechanism by which to import and impose more stringent water quality objectives based on numeric values contained in other California laws, rather than the relevant Basin Plan, even though those numeric values were not adopted for that purpose.”</p>	<p>The use of evaluation guidelines to interpret narrative water quality objectives complies with the State Water Board’s Listing Policy. The use of these evaluation guidelines does not establish new numeric water quality objectives, so there is no legal requirement for the Colorado River Basin Water Board to consider the factors in Water Code section 13241. Please see the response to comment CVWD-2, as well as to comments CVWD-1, CVWD-3, and IID-4.</p>
IID-6	<p>“The listing of a water body as impaired qualifies as a regulation, which is subject to the requirements of the California Administrative Procedures Act. A “regulation” subject to the APA has two characteristics. (<i>See Tidewater Marine Western, Inc. v. Bradshaw</i>, 14 Cal.4th 557, 571 (1996).) First, the regulation must be a rule or standard of general application. The 303(d) List is a rule of general application applicable to all impaired waters in the State of California. Second, the regulation must be adopted by the agency to implement, interpret, or make specific the law enforced or administered by the agency. The State Water Board is the agency that enforces and/or administers the Porter-Cologne Water Quality Control Act and the Clean</p>	<p>Please see the response to comments IID-5 and CVWD-2. The use of evaluation guidelines to develop listing recommendations for the 303(d) List does not establish new numeric water quality objectives, so there is no “circumventing” of the Basin Planning process or any rulemaking occurring.</p> <p>Rather, the regulation of general applicability is the State Water Board’s <i>Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List</i> (Listing Policy), which provides a standardized approach for developing California’s 303(d) List. This policy went through a rulemaking process in compliance with the</p>

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	<p>Water Act for the State of California pursuant to Water Code sections 13140, <i>et seq.</i> and 13370, <i>et seq.</i>... IID recognizes that the APA partially exempts basin planning from its general requirements....However, here Staff is attempting to circumvent the basin planning process and Water Code section 13241; thus, such an exemption cannot be invoked.”</p>	<p>California Administrative Procedure Act and was approved as a regulation by the Office of Administrative Law. (See Wat. Code, § 13191.3, Cal. Code Regs., tit. 23, § 2916.) The development of 303(d) List recommendations pursuant to the Listing Policy is not itself a regulation.</p> <p>Finally, it is worth noting that listing recommendations have no effect until adopted by USEPA. Once a state completes its 303(d) List recommendations, the state then submits them to the USEPA for an independent review. (33 U.S.C. § 1313(d)(2).) Following review, USEPA can approve the recommended list in whole or in part, add waters it finds to be impaired, and/or remove (“delist”) waters it finds meet acceptable standards. (<i>Id.</i>, 40 C.F.R. § 130.7(d)(2).) “Because U.S. EPA may change the State Water Board’s recommended section 303(d) list, the section 303(d) list is only effective upon U.S. EPA’s final approval.” (Listing Policy, § 6.3.)</p>