

# Appendix E

Testimony Hearing Transcript  
January 14, 2009

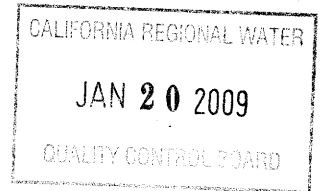
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California Regional Water Quality Control Board

San Francisco Bay Region

January 14, 2009, 9:00 a.m.



Elihu M. Harris Building

First Floor Auditorium

1515 Clay Street

Oakland, CA 94612

**Item 7. Evaluation of the Water Quality Conditions for the San Francisco Bay Region - Proposed Revisions to the Clean Water Act Section 303(d) List of Impaired Waters Hearing to Consider Proposed Revisions.**



**ORIGINAL**

1 Item 7. Evaluation of the Water Quality Conditions for the  
2 San Francisco Bay Region - Proposed Revisions to the Clean  
3 Water Act Section 303(d) List of Impaired Waters Hearing to  
4 Consider Proposed Revisions.

5 Chair Muller - First things first. We thank Item  
6 7 participants and commenter's here, and staff, for their  
7 patience on this. That other item, we just needed to get  
8 that going so they could get back east and get reported in  
9 there and start the process. So thank you, and moving on to  
10 Item 7, we have many many cards, so we will try to do the  
11 best we can to keep the time under control. And so go  
12 ahead, please.

13 Mr. Wolfe - Right. Item 7 is proposed revisions  
14 to the state's what we call the 303d list, and this is based  
15 on assessment and proposed update. So there are a lot of  
16 moving parts here. I would like both Barbara Baginska and  
17 Richard Looker to make the presentation on this. Recognize  
18 that this is a testimony hearing, there is no action. All  
19 comments, you have seen extensive comments in your package,  
20 but both those comments we receive today and Board member  
21 comments, we will be reviewing and providing a formal  
22 response to comments. We do not have that at this point.  
23 With that, I would like Barbara to begin the presentation.

24 Ms. Baginska - Good morning, Chair Muller and  
25 members of the Board. My name is Barbara Baginska from the  
26 Planning and TMDL Division, and today, together with Richard

1 Looker, I will be presenting information on surface water  
2 quality in our region. During this presentation, I will  
3 talk about how we assess water quality, and walk you through  
4 the steps and methods used to identify water bodies that do  
5 not meet water quality standards. We recommend that these  
6 water bodies be placed on the 2008 303d list of impaired  
7 waters. And we will more fully explain it in a moment.

8           Our 303d list and water quality assessments were  
9 prepared in close collaboration with the State Board and  
10 other regions, and this should result in improved  
11 consistency and better quality in the results of the  
12 assessment process. As Bruce just said, this is the first  
13 of the two planned hearings and today is the public  
14 testimony hearing which provides an opportunity for us to  
15 explain what we did and, most importantly, it offers an  
16 opportunity for stakeholders to communicate their interest  
17 directly to you, and for you to ask questions of staff and  
18 stakeholders.

19           So why are we doing this? The Federal Clean Water  
20 Act requires each state to conduct water quality assessments  
21 and to prepare a report on the quality of all waters every  
22 two years. And Section 303d of the Clean Water Act also  
23 requires states to develop a report at least of waters not  
24 meeting water quality standards. The last 303d list of  
25 impaired water bodies was prepared and adopted by the State

1 Board in 2006, which is approximately two years ago. At  
2 that time, the State Board listing policy was also first  
3 used. The combined results of the statewide assessment of  
4 water quality and the 303d list formed the integrated report  
5 that will be compiled by the State Board, and later  
6 transmitted to the U.S. EPA.

7           So as I just mentioned, the 303d list compiles  
8 water bodies that are not meeting water quality standards  
9 and therefore are considered impaired. The 303d list  
10 includes names and locations of water bodies and identifies  
11 the pollutants that are causing the impairment. For  
12 example, this year we are proposing to list Kirker Creek  
13 because it exceeds toxicity guidelines. The toxic  
14 conditions in the creek have been linked to the presence of  
15 Pyrethroids. Also, for the first time this year, we are  
16 recommending to list creeks for trash, and Richard will be  
17 discussing trash listings next. The 303d list also  
18 identifies whether a TMDL is needed, or whether some other  
19 regulatory action is expected to achieve water quality  
20 standards. Most new listings require a TMDL.

21           So the first step in this process was for us to  
22 identify assembly and systematically review already  
23 available good quality monitoring data. Consistent with the  
24 listing policy, we have conducted assessments of the status  
25 of each water body, using the line of evidence approach.

1 The lines of evidence in support of listing and the Listing  
2 Decisions for each affected water body are summarized in a  
3 water body specific fact sheet, and these fact sheets are  
4 included in your package. In addition, we also reviewed the  
5 2006 303d list Listing Decisions and updating the listing  
6 status if new information was available. Staff then  
7 developed recommendations for changes to the 303d list, and  
8 the last step in this process will be for you to approve  
9 those recommendations and submit to the State Board for  
10 inclusion on the 2008 303d list of impaired waters.

11 Just very briefly, I would like to highlight the  
12 key steps and dates in this process. This project started  
13 at the end of 2006 with the release of public solicitation  
14 letter requesting the agencies collecting monitoring  
15 information and the general public to submit data. The  
16 solicitation period ended in February 2007 with 16  
17 submittals received. Then, we considered and evaluated all  
18 the data, prepared the lines of evidence and the fact  
19 sheets, and the results of the water quality evaluation are  
20 discussed in the Draft Staff Report that was released for  
21 public review in October 2008, and we received 26 comment  
22 letters. And we are currently reviewing the comments and  
23 intend to make final recommendations for listings of water  
24 bodies on the 303d list at the Board Meeting in February.

25 During this listing cycle, we focused on

1 evaluation of the data collected by the Surface Water  
2 Ambient Monitoring Program, also known as SWAMP. SWAMP  
3 started collecting data in 2001, but only now have we had an  
4 opportunity to have a comprehensive region-wide look at the  
5 data that were collected from 2001 through 2006. The SWAMP  
6 monitoring covered 37 watersheds and more than 190  
7 locations. Multiple locations and hydrologic regimes were  
8 sampled, and the data comprised a long and comprehensive  
9 list of water quality parameters and additional ancillary  
10 information. At this photo, you may recognize Karen  
11 Taberski of our staff, who over the years has been managing  
12 the SWAMP program and, together with many others, collected  
13 and evaluated the data. And this is just a snapshot of the  
14 monitoring team in action. The SWAMP team also conducted  
15 preliminary screening of the data for the purpose of the  
16 303d list.

17 To assess water quality in our region, we use the  
18 principles and the implementation guidelines of the State  
19 Board Listing Policy. The policy that was first road tested  
20 by the State Board in the 2006 assessment cycle establishes  
21 a standardized approach for developing the 303d list that is  
22 consistent and defensible. It also determines requirements  
23 for the quality and quantity of data needed to support the  
24 listing. It also includes factors to consider in order to  
25 support a finding of impairment. One of these factors



1 identifies a means for situation specific weight of evidence  
2 listings.

3           The Integrated Report that the State Board  
4 ultimately prepares summarizes all water quality assessment  
5 information and provides an inventory of the waters within  
6 the state. Our region, together with other regions in  
7 California assembles water quality information with a common  
8 format and methodology, so the State Board will be able to  
9 report on the water quality of the state surface waters to  
10 the U.S. EPA. In the Integrated Report, the status of every  
11 water body is being described by one out of five categories  
12 recommended by the EPA and presented in this slide.

13 Categories 1 and 2 classify waters as supporting one or more  
14 beneficial uses; Category 3 water bodies have insufficient  
15 information to determine that waters might be impaired; and  
16 finally, last two categories represent waters not supporting  
17 beneficial uses that make up the 303d list. Those water  
18 bodies classified as Category 5 require a TMDL in order to  
19 attain water quality standards.

20           This slide shows proposed additions to the 303d  
21 list for trash. And there are 26 water bodies that are  
22 proposed to be listed because of trash impairment. You can  
23 see that these listings occur throughout the region. And  
24 again, in a moment, Richard will walk through these  
25 listings.

1           We are also proposing listings for pollutants  
2 other than trash, and there are two listings for which  
3 TMDL's have been already adopted. Kirker Creek is proposed  
4 for Pyrethroids and Almaden Lake and Almaden Reservoir are  
5 proposed for Mercury. The TMDL for pesticides in urban  
6 creeks and the Guadalupe Watershed TMDL for Mercury will  
7 address these impairments. The slide is also showing the  
8 locations and of other new listings in our region. We  
9 propose to list Suisun Creek for the salt oxygen and  
10 temperature, Mount Diablo Creek for water toxicity,  
11 Codornices Creek for temperature, San Leandro Creek for  
12 Chromium VI, Arroyo Las Positas for eutrophication, Arroyo  
13 Mocho for temperature, Stevens Creek for temperature,  
14 Permanente Creek for selenium and water toxicity, and San  
15 Mateo Creek for sediment toxicity. The map and the listing  
16 details are in the Staff Report.

17           We also recommend that three segments of San  
18 Francisco Bay are taken off the 303d list. Fifty-nine to  
19 over 100 samples were collected in each of these segments by  
20 the Regional Monitoring Program and analyzed for Nickel.  
21 None of these samples exceeded the water quality objectives  
22 that apply in the Bay.

23           And finally, we have revised the status of one  
24 listing since 2006. We are proposing that a TMDL is not  
25 required for the 71-acre sediment hotspot in Castro Cove.

1 You adopted the Clean-up and Abatement Order for this water  
2 body in 2006 and this regulatory action should result in  
3 restoring water quality to meet applicable water quality  
4 standards. And now, Richard will talk about the proposed  
5 trash listings that generated the most comments and debate.

6 Mr. Looker - Good morning, Board. Because a large  
7 share of the proposed listings that we have are for trash,  
8 and then also a lot of the feedback that we got back was  
9 about trash, we thought it made sense to devote a little bit  
10 of extra time in the presentation to show and talk about how  
11 we did our evaluation of impairment for this pollutant. The  
12 first thing to point out is we have a lot of trash data  
13 available to us to do the evaluation. The major part of it  
14 comes from these trash assessments that are called "Rapid  
15 Trash Assessments" and they were developed actually by Board  
16 member Steve Moore when he was on staff; he was really kind  
17 of the brains behind this. This method was then slightly  
18 evaluated by the Santa Clara Storm Water Program to make it  
19 perhaps a little bit more streamlined, but it is essentially  
20 the same method. And the idea is that you send an  
21 assessment team out and you characterize trash in a small  
22 section of stream, like a 100-foot section. And you  
23 quantify the trash, you characterize the type of trash it  
24 is, and develop these metrics that I'll talk about in just a  
25 moment. And then scores are established for these trash

1 impacts.

2           The other type of evidence that we had was  
3 photographic evidence and we have something like 900 photos  
4 submitted of trash, you know, going back ten years. People  
5 have been out there documenting it. So this presented a  
6 challenge because, you know, we have to find some way to  
7 have a framework of evaluating these to evaluate whether  
8 beneficial uses are impaired, but it was a very easy and  
9 convenient way for citizens in some cases to be out there  
10 documenting what they see to help us get a better handle,  
11 because we cannot be everywhere and finding out where  
12 problems are, so with a camera and digital camera these  
13 days, it is a very straightforward way, but the challenge of  
14 interpreting, we needed to work out.

15           So the SWAMP Rapid Trash Assessment method and  
16 that Santa Clara Valley method, again, you assess 100-foot  
17 stream section, you count the trash, and develop scores for  
18 the six perimeters of trash impacts, something called a  
19 level of trash, the number of items found, the type of trash  
20 that would be a threat to aquatic life and wildlife, type of  
21 trash that might be a threat to human health, evidence that  
22 the problem might be due to illegal dumping, and then trash  
23 accumulation. So to get trash accumulation, the last thing  
24 you do is you clean every bit of trash that you can find on  
25 that section, and then you come back at some later time

1 after a few weeks or a month, and do the assessment again.  
2 And then you can calculate the return rate of trash to that  
3 area. And so what we looked for is a poor condition score  
4 for these two trash metrics -- level of trash relating to  
5 the non-contact recreation beneficial use, you know, walking  
6 the creek and just trying to recreate there, and then the  
7 threat to aquatic life perimeter, we linked to the  
8 impairment of wildlife habitat beneficial use. So if we saw  
9 from our trash assessments a poor condition score on more  
10 than one day and, in almost all cases, in more than one  
11 location on that water body, we would recommend listing that  
12 water body.

13           So for photos, we scratched our heads about what  
14 to do about this and we came up with an idea to apply the  
15 rapid trash assessment methodology to the photos because,  
16 after we looked at the photos, we had 900 of them. In some  
17 cases we had 50, 60, 70 photos at a location, and we found  
18 that we could sort of do a virtual trash assessment given  
19 sufficient quantity and quality of the photographic  
20 evidence. So what that means is that we needed to have a  
21 panoramic photo of the site. We could not just have close-  
22 up photos; we needed to have that panoramic photo that  
23 allowed the people with trash assessment to experience, to  
24 sort of evaluate that first level of trash perimeter,  
25 because that is kind of like your visual impression of the

1 site is what that is tied into. And then we needed the  
2 close-up photos to be able to count individual pieces of  
3 trash and the type of trash that might be a problem for  
4 aquatic life and wildlife. So what we were looking for was,  
5 was the visual impression that we got from the photos  
6 similar to that for location scoring in the poor condition  
7 category if we were actually there doing a field assessment;  
8 and, if so, we would assert that Rec 2, that non-contact  
9 recreation beneficial use, or the wildlife habitat  
10 beneficial use, was not supported. And, again, we did not  
11 trigger this proposed listing based upon just one site and  
12 one date, they had to be sort of an extent through time and  
13 space for us to do this in most cases.

14 So I am not going to show you all 900 photos,  
15 obviously, but I want to show you what you can see from a  
16 photo. And this is an example of what we would call a  
17 close-up photo, and you can clearly see the Styrofoam cups  
18 there that can break down and cause a problem for wildlife  
19 through accidental ingestion. And if you look closely, you  
20 can probably see spray paint cans and other nasty stuff  
21 there. But here is an interesting thing, is that even  
22 though I think that everybody would agree that that is a  
23 trashy site, we were not able to establish a rapid trash  
24 assessment score for this site on this date because we did  
25 not have the panoramic photos. So this is an example of, I

1 think, the restraint that we exercised in not just taking a  
2 photo like this and saying, you know, "poor condition." If  
3 we had had a panoramic photo here, we probably would have  
4 been able to do that, but we were not able to do so in this  
5 case, and so we did not.

6           So here is another photo from the same creek on a  
7 different date, and this is an example of other types of  
8 trash that is associated with an impact to aquatic life and  
9 wildlife. And it involves paint. So you see a five-gallon  
10 paint bucket there, and then the other arrow points to one  
11 of the numerous spray paint cans that was found at this  
12 site. And so there could be residue in the paint bucket  
13 that can be ingested or be toxic to aquatic life and  
14 wildlife, and similarly with the spray paint cans. Those  
15 cans start to deteriorate and their contents can leak out.  
16 And then there is a glass bottle there, it could be broken  
17 and, you know, there is just a lot of stuff that you can see  
18 very clearly from these photos. That is something that was  
19 quite surprising, that you would be able to determine from  
20 the photos.

21           So now I want to go through sort of two examples,  
22 one a case where we felt that we had a strong enough case to  
23 make for listing, and one where we did not. So the first  
24 one is Coloma Creek from San Mateo County and, you know, it  
25 is probably not debatable that you can clearly see trash

1 from these photos, and you can see the type of trash that is  
2 associated with threat to aquatic life, and it is pretty  
3 messy; but that was not enough. What we needed was we  
4 needed to have this extent through space and time, and then  
5 the two types of photos. So here, we had a pretty good  
6 case. We had three different sites on this creek. We had  
7 five different dates. And we had spanning 2002 to 2006. We  
8 had 50 close-up photos and eight panoramic photos, so it met  
9 our data quality and quantity screening criteria for making  
10 a strong case for listing, and we are proposing listing this  
11 creek. So I will contrast that to Ledgewood Creek in Solano  
12 County, where, again, if you look at the photos, you can  
13 easily see trash. But we had a couple of problems, 1) we  
14 had one site only, we had three different dates, but we only  
15 had close-up photos, we did not have those panoramic photos  
16 to allow us to put these close-up photos into context, so we  
17 were not able to do this virtual rapid trash assessment for  
18 this site, and so we are not proposing listing. That is not  
19 to say that there is not impairment here, but we had to have  
20 some business rules to follow. And we were not able to make  
21 a case for this creek.

22 So I am going to switch gears now away from trash  
23 for the moment and talk about the comments that we received  
24 on the overall listing effort. We received 26 comment  
25 letters from these entities, the Urban Runoff Agencies,



1 Municipalities, BASMAA, which is Bay Area Storm Water  
2 Management Agencies Association, environmental groups,  
3 concerned citizens, BACWA, which is Bay Area Clean Water  
4 Agencies, and WSPA, which is Western States Petroleum  
5 Association. And, as Bruce said, we are not going to be  
6 using this testimony hearing to respond to all the comments,  
7 but I want to go through the general flavor of the comments  
8 that we got from these parties and I may have a few  
9 observations on some of them, but we are not giving a formal  
10 response at this time -- but we will through this process  
11 next month.

12           Okay, so for Storm Water Management Agencies, a  
13 lot of the comments they had had to do with trash and the  
14 general theme of their comments was that they felt that the  
15 way that we went about listing, or proposing listing for  
16 creeks for trash was inconsistent with their interpretation  
17 of the listing policy. So in specific comments, they  
18 disagree with our decision to list entire creeks, or Bay  
19 segments for trash when we had data in discrete locations,  
20 and so they do not want us to list the entire water body;  
21 they want us just to focus on those locations where we had  
22 data. They contend that the assessment method for trash is  
23 not scientific enough, or reproducible enough to justify  
24 listing. They object to the use of photos as a sole basis  
25 for listing, in some cases. We did not do that for every

1 creek, but a handful. They felt that we should take into  
2 consideration the active trash control programs that may be  
3 in place in some of these creeks before we list a creek.  
4 For other perimeters besides trash, they felt that -- they  
5 were uncomfortable with our use of reference guidelines and  
6 these were not adequate to use for listing if we did not  
7 have a numeric water quality objective. Now, we have been  
8 working closely with both of the regions and the State Board  
9 staff as we developed all of our lines of evidence, and all  
10 of our proposing listings, and State Board staff have  
11 reviewed all of our proposed listings, so we are quite  
12 confident that we have consistently applied the listing  
13 policy for not just the trash listings, but for everything  
14 that we have done.

15           Environmental groups generally support the trash  
16 listings and the listings for Pyrethroids. San Francisco  
17 Baykeeper has requested that we list San Francisco Bay for  
18 PBDEs, and we definitely share the concern with PBDEs, but  
19 in looking at the breadth of the evidence, we feel that the  
20 evidence does not support a listing at this time. We are  
21 continuing to track this pollutant and gather a lot of  
22 information through the RMP and all of the environmental  
23 compartments -- sediment, biota, and water, and we are  
24 absolutely going to be revisiting this issue in the next  
25 listing round, which is coming up very soon, probably within

1 a year we will be putting out the data solicitation. The  
2 Center for Biological Diversity requested that we list the  
3 Pacific Ocean for acidification due to increased carbon  
4 dioxide absorption because of climate change. This is more  
5 of a state-wide issue, so the State Board is going to have  
6 to take on this for the entire state.

7           Concerned citizens -- most of the letters we got  
8 from citizens supported the trash listings. There was one  
9 that disagreed with the trash listings out of the fear that  
10 what the trash listings would do would just kind of spur us  
11 into TMDL development, and actually delay getting started on  
12 trying to solve the problem, but that is not how we intend  
13 to go about actions for trash. As you know, through the  
14 Municipal Regional Permit, there is a lot of focus and  
15 attention on trash, and that is the intended first step, is  
16 to see how much of the problem we can solve through these  
17 types of permitting efforts before we go down the road of  
18 developing TMDLs. So I think that our proposed plan of  
19 attack, I think, is consistent with what this citizen  
20 thought was appropriate. One commenter stated that a TMDL  
21 was still needed for Steege Marsh. Steege Marsh -- there is  
22 a clean-up action that has been transferred to the authority  
23 of DTSC, and because there is a regulatory action in place  
24 that will result in resolution of the water quality  
25 impairment, this is a case where a TMDL is not needed.

1 There is like a focused effort on this problem, and so there  
2 is not a TMDL needed there. One commenter requested that we  
3 clarify that Almaden Lake and Reservoir do not require  
4 TMDLs. As Barbara said, those are listed, but the TMDL  
5 effort for the Guadalupe River Watershed will be resolving  
6 those problems, so there is not an independent TMDL needed  
7 for those reservoirs.

8 Finally, BACWA and WSPA requested that we de-list  
9 San Francisco Bay for Selenium. And as you know, we are  
10 working on a TMDL for Selenium in the northern segments of  
11 San Francisco Bay that will not only protect sensitive  
12 species, among them these sturgeon here, but also this TMDL  
13 will resolve a lot of the scientific issues that are out  
14 there.

15 So the next steps are prepare responses to all the  
16 comments that we have received, and revise the staff report  
17 and propose 303 recommendations accordingly because we  
18 already have found out through some of the comments that  
19 there were some things to correct; like one example would be  
20 we had proposed listings for Alameda Creek for trash, but  
21 the data we actually have, we found out, is for a water body  
22 called Old Alameda Creek. So there are little corrections  
23 like that which we can have an opportunity to correct. You  
24 know, it is a big effort that has been going on over the  
25 last couple years, so there is bound to be some of these

1 little corrections.

2 So then we intend to come back to you next month  
3 to seek approval of the 2008 303d list and, if that happens,  
4 then we would be transmitting it to the State Board for  
5 their review and public process. So at this time, we would  
6 be happy to answer any questions you may have.

7 Chair Muller - Board members? We will start at  
8 the end, Board Member Moore.

9 Mr. Moore - I have a couple quick ones. In  
10 reading through the comment letters, there were a couple  
11 statements about some concern from the municipalities that  
12 the data that they had available was not used in the  
13 assessment, but I suspect they did not respond formally to  
14 the data solicitation. I mean, how would you explain that  
15 certain data were not evaluated?

16 Mr. Looker - I will have to look at the specifics,  
17 but that would be my guess, is that anything that was  
18 submitted to us, we did evaluate and so this is one of the  
19 challenges of a listing evaluation, that at some point you  
20 have to cut off the body of data that you are looking at; it  
21 cannot be a continuous process. So that is my, you know,  
22 not having looked at the comment, everything that we got, we  
23 looked at.

24 Chair Muller - Board member Singh.

25 Dr. Singh - I have a question about the measuring

1 the trash aspect of the creek. Depending on the length of  
2 the creek, if a creek is 10 miles long and another creek is  
3 15 miles long, what length has to be full of trash, or do  
4 you have certain criteria that the measure of that creek can  
5 be put on the 303d list? Or just how many site specific  
6 photographs you have to take? Is something measured with  
7 the linear length of the stream? Or a certain number of  
8 sites you need to check out? How do you determine what site  
9 to go to when they go to any open site, whether it is a  
10 rural area, or you go only to the urban areas? I am  
11 questioning you about the standard you use about putting a  
12 creek on the 303d list for trash, because there are a lot of  
13 questions raised over here in your comments. I was reading  
14 through some of the comments, and the Santa Clara Valley  
15 Water District has many long pages of comments on each  
16 creek. So I just wanted to make sure the standard is very  
17 consistent and it is unquestionably unbiased. And  
18 processing is random, it is not --

19           Mr. Looker - Yeah, I can speak to some of this.  
20 So in the large majority of cases, what we required was  
21 trash assessment or photographic evidence that resulted in  
22 the evaluation being poor condition on more than one date,  
23 so it had -- this problem had to persist through time, and  
24 in more than one location on the water body. Now, there  
25 were perhaps a couple of instances where there was just one

1 location and that might have been because there was only one  
2 location surveyed, but it was pretty bad, and so we proposed  
3 listing because we felt that there was a problem there. But  
4 there was not -- there was not a data collection effort like  
5 where, a priori, we looked at water bodies and we said,  
6 "Okay, we want to get trash along the whole length of this  
7 water body." We used the information that we had available  
8 to us that was collected through SWAMP, through the Santa  
9 Clara Valley Program, and through photographic evidence  
10 submitted to us. Now, I know that for the data collected  
11 through SWAMP, there was some effort made to get sort of a  
12 representative picture of the different types of water  
13 bodies, or environments that you would find in water bodies  
14 around the Bay Area. So it was not just a case of targeting  
15 spots where they knew there were trash, they wanted to get a  
16 general picture of different types of environments because  
17 one of the things that they were doing was testing the  
18 method, to see if it was sensitive enough to detect the  
19 differences between different types of impacted sites. So I  
20 appreciate your caution, but we were in a position where we  
21 had to evaluate the data that we had available to us. And  
22 we did establish these business rules, or data sufficiency  
23 and quality thresholds that we felt did not just have us  
24 make a knee-jerk reaction where, oh, we have got one photo  
25 about trash, we are going to say "list." We had made a good

1 faith effort to establish that this problem had to persist  
2 through time and be present at more than one site before we  
3 would recommend listing a water body.

4 Chair Muller - Thank you. Any other comments from  
5 Board members? Yes, go ahead, Vice Chair.

6 Vice Chair Young - With respect to PBDEs, I want  
7 to explore a little bit more exactly why we are not  
8 considering listing for PBDEs. The discussion about listing  
9 that you gave talked about, I think, talked about both  
10 effects on aquatic life and exposure, and that is a logical  
11 thing, we want to assure ourselves that organisms are being  
12 exposed, and then we want to assure ourselves that we know  
13 what the effects are, and that there are adverse effects.  
14 The additional data that you mentioned from the RMP sounded  
15 like it was going to be targeted only to the exposure side,  
16 although I understand from other discussions with staff that  
17 there is also some concern about the amount of evidence that  
18 we have on the effects side for aquatic life. So can you  
19 speak to whether we are going to be getting sufficient  
20 information in the next couple of years on both sides of  
21 that question? Exposure and effects?

22 Ms. Feger - My name is Naomi Feger, one of the  
23 Section Leads in planning TMDL. My understanding is the  
24 same, what you are talking about, Terry, that the RMP has  
25 been looking for doing studies to try to evaluate an effect



1 threshold for aquatic life in the Bay. We have not been  
2 successful to date. I think they are still continuing those  
3 efforts to evaluate your impacts to birds, or other aquatic  
4 life in the Bay. So we will be continuing those special  
5 studies through the RMP, in anticipation that that will help  
6 us to establish a basis for the listing.

7 Vice Chair Young - All right, so we are going to  
8 have improved information on both exposure and the effects,  
9 hopefully, and we will continue to design the studies to do  
10 so?

11 Ms. Feger - Correct. We will continue to do  
12 through staff's and trends, collect PBD data on exposure  
13 through all the different environmental media.

14 Vice Chair Young - All right. Thank you for that  
15 clarification. I appreciate it.

16 Chair Muller - Okay, Board member McGrath, you all  
17 right? We have got a lot of cards to go here. So let us  
18 try to condense your comments. I am sure we are all going  
19 to be talking about the same issue there, so I will start  
20 first with Vallejo Sanitation District. And it is Dan  
21 Tafollio? Taffolla. Sorry about that, Dan. And next will  
22 be San Mateo, Vern.

23 Mr. Tafolla - Good morning. My name is Dan  
24 Tafolla and I am the Environmental Services Director for  
25 Vallejo Sanitation and Flood Control District. First of

1 all, I would like to thank the Board for the opportunity to  
2 participate in the 303d listing process, which we believe is  
3 important to promoting the mutual goal of preserving and  
4 enhancing the quality of water that enters the San Francisco  
5 Bay. We applaud the Water Board and their staff for the  
6 time and individual efforts to establish the list. We know  
7 that a lot of work goes into it. I am here today because  
8 one of Vallejo's waterways, Ringler Creek, has been included  
9 on the revised list. Because we are an agency that is  
10 responsible for both flood control, as well as storm water  
11 pollution control, trash represents a significant problem to  
12 us. It not only pollutes local waterways and can harm  
13 aquatic life, it also represents a potential flooding  
14 problem, especially when we have intense rain events, if we  
15 ever get rain again. Accordingly, the district is  
16 supportive of efforts to address trash control and  
17 reduction, provided that these efforts are based on sound  
18 evidence and promote efficient and responsible use of fiscal  
19 resources. Trash at Ringler Creek and other Vallejo  
20 waterways has been a longstanding problem. It tends to  
21 become trapped in vegetation and drainage conduits that flow  
22 under streets in Interstate 80. This results in an eyesore  
23 and a concern for localized flooding. Managing trash in the  
24 Ringler Creek area has been difficult because it originates  
25 from various sources, including wind, water, pedestrians,

1 cars, visitors to Six Flags Discovery Kingdom, homeless  
2 encampments, and much more. However, clean-up efforts by  
3 the district, City of Vallejo Landscape Maintenance  
4 District, and community volunteers over the last two years  
5 has greatly reduced the amount of trash that can be seen  
6 along the creek. During the past few years, the district  
7 has dedicated funding and manpower resources to address the  
8 trash problem at Ringler Creek. We formed and continue to  
9 sponsor the Vallejo Watershed Alliance, which is a  
10 partnership of public agencies and interested individuals,  
11 working together to improve the greater Vallejo Watershed.  
12 We sponsor twice a year creek clean-ups at Ringler Creek in  
13 areas where most of the trash accumulates. District field  
14 crews also perform preventative maintenance along the creek  
15 where possible, and this includes a bank and slope mowing  
16 and removal of large debris. District staff also removes  
17 debris from the underwater culvert below Fairgrounds Drive.  
18 This is one of the areas where most of the trash  
19 accumulates, and we do that before and after storms. Clean-  
20 up efforts by the City of Vallejo, the District, and the  
21 community volunteers over the last two years, have greatly  
22 reduced the amount of trash that can be seen along the  
23 creek. However, much work does remain to be done. More  
24 recently, the district has surveyed Ringler Creek several  
25 times to identify sources of trash, and to develop a

1 strategy for controlling trash in this watershed. We  
2 determined that the primary source of trash is from nearby  
3 shopping centers, as well as homeless encampments. We  
4 intend to address the source by performing assessments to  
5 identify where trash accumulates. This information will be  
6 used to identify management practices, to remove the trash  
7 at the source. The district requests that the Water Board  
8 consider the current state of Ringler Creek as evidence of  
9 improved conditions, rather than the evidence using the  
10 assessment, which is as old as 2001. As a local agency  
11 responsible for providing flood control, wastewater and  
12 storm water pollution prevention, industrial pre-treatment,  
13 bio-solids management, and wastewater treatment services for  
14 the City of Vallejo, the district must address a variety of  
15 water pollution issues. We make every effort to protect the  
16 public and local environment. From the top management level  
17 to the lowest paid position, we are dedicated to  
18 demonstrating full compliance with applicable laws and  
19 regulations, while at the same time providing the most cost  
20 effective services possible to our customers. Given the  
21 current economic environment and limited availability of  
22 funds, especially in the storm water area, this challenge is  
23 evermore difficult. In light of these circumstances, which  
24 are no doubt mutual concerns to a good number of agencies  
25 like the district, it is imperative that future resources

1 are focused on measurable solutions that would decrease  
2 pollution, improve water quality, and increase enjoyment of  
3 our waterways.

4 Chairman Muller - I am going to need you to  
5 conclude soon.

6 Mr. Tafolla - Okay. Therefore, we are asking the  
7 Board to consider allowing us to continue our efforts in  
8 lieu of being listed, which would divert funding currently  
9 used for trash removal to form studies and assessments that  
10 will eventually concern what we already know. So I would  
11 like to thank you for your consideration of these comments,  
12 and we look forward to working with you in the development  
13 of the final list. Thank you.

14 Chair Muller - Thank you for the good work you are  
15 doing. Board member?

16 Mr. McGrath - I have two questions if you -- if I  
17 heard you correctly, you are saying that you are continuing  
18 to remove trash and there is less trash visible.

19 Mr. Tafolla - Yes.

20 Mr. McGrath - Is the amount of trash that you are  
21 removing going down? Have you documented how much you are  
22 removing?

23 Mr. Tafolla - We have not got to that point yet.  
24 The amount has not gone down. We think that probably source  
25 control would be the answer to that, working with the

1 commercial developments to improve control of their trash.

2 Mr. McGrath - So you do not think the amount has  
3 gone down. That is the first question. The second question  
4 is, were there any conditions put -- you said the shopping  
5 center is one of the biggest -- you suspect one of the  
6 sites. Were there any conditions put on the approval of  
7 that shopping center that involved litter control and  
8 mitigation of that?

9 Mr. Tafolla - No. These are developments that --  
10 they are very old.

11 Mr. McGrath - Okay.

12 Chair Muller - Thank you.

13 Mr. Moore - Can I have a quick question? Mr.  
14 McGrath had one of my questions, thank you. And thank you  
15 for your commitment to the trash issue. We really  
16 appreciate it. How long have your maintenance workers been  
17 getting into creeks and are their feet wet?

18 Mr. Tafolla - This is actually recent, within the  
19 last few years, that we have intensified our efforts, once  
20 we realized that there was a problem there.

21 Mr. Moore - Very good. Thank you.

22 Chair Muller - Vern, please, and then followed by  
23 Jody from Santa Clara County.

24 Mr. Bessey - Mr. Chairman, Board members, my name  
25 is Vern Bessey. I am an Environmental Programs Manager for

1 the City of San Mateo Public Works Department. My comment  
2 pertains to the proposed listing of San Mateo Creek for  
3 sediment toxicity. I would like to just like to repeat a  
4 comment that has already been submitted in writing by the  
5 San Mateo County-wide Storm Water Program, which is that the  
6 two creek locations where the sediment samples were  
7 collected are actually both within the tidal zone,  
8 therefore, it cannot seem to be concluded for certain  
9 whether the sediments associated with the toxicity  
10 originated from the creek watershed or from the Bay. Since  
11 Bay sediments have been associated with toxicity, the origin  
12 of the San Mateo Creek sediment toxicity is also uncertain.  
13 As it cannot be determined with certainty the actual origin  
14 of the sediments that show the toxicity, the listing of San  
15 Mateo Creek does not seem to be warranted at this time.  
16 Further studies should be conducted to determine whether the  
17 toxicity originates from the creek's watershed, or the Bay,  
18 before deciding whether there is a value to listing the  
19 mouth of this creek for sediment toxicity. That is my  
20 statement, thank you.

21 Chair Muller - Thank you. Board member?

22 Mr. Moore - Actually, in the SWAMP, we documented  
23 through diurnal measurement of salinity at that location, it  
24 has only affected very periodically at the highest high  
25 spring tides, based on round the clock monitoring. So it is

1 mostly a watershed site based on the scientific information  
2 that SWAMP has.

3 Chair Muller - Okay, thank you. I do not know,  
4 Greg, or Jody, who wants to go first? So Santa Clara County  
5 representatives here?

6 Ms. Esser - Good morning and thank you for the  
7 opportunity to address here this morning. My name is Jody  
8 Hall Esser. I am the Director of Planning and Development  
9 for the County of Santa Clara. The County of Santa Clara  
10 certainly shares the Regional Board and staff's goal of  
11 having safe, clean waterways for all living things. We do  
12 have some specific questions that we enumerated in a letter  
13 sent to your staff on the fourth of December. I cannot tell  
14 from your packet whether you received copies of that  
15 communication, but by the shake of heads, I see you did, and  
16 I am glad to hear it.

17 Chair Muller - We get the comment letters at our  
18 home address, and they do not get them here. Is that  
19 correct?

20 Mr. Wolfe - Given the number of comments, we  
21 posted those on the Web, but we did not add all...

22 Chair Muller - Excuse me for interrupting. Just  
23 for your information, Jody.

24 Ms. Esser - That is okay. Thank you. I will try  
25 and be very brief.



1 Chair Muller - No problem.

2 Ms. Esser - We tried to enumerate in our letter  
3 that we have spent millions of dollars in trash clean-up  
4 efforts. We continue to do so to work with SCUVRPPP, to  
5 increase those efforts, and our pledge to do so into the  
6 future. We have eight creeks and one river that are  
7 proposed to be listed in the trash TMDL, and we are very  
8 concerned about that listing. Because we believe there  
9 truly is little scientific data to support those eight  
10 creeks and one river being listed, most of the data does  
11 consist of photos, we believe that those do not justify  
12 entire waterways being listed, but rather hotspots. We are  
13 committed to work on those. We have in the past, we will in  
14 the future. We also believe that including entire waterways  
15 dilutes existing resources which, as you are very well  
16 aware, are of great concern to us at this time and will be  
17 into the future. We also believe that the generic trash  
18 definition is not as useful as we would hope it could be in  
19 terms of our understanding the actual nature of trash, and  
20 putting our resources to resolving the issues related to  
21 specific types of trash in specific areas. Lastly, I would  
22 just like to comment that we believe that the February  
23 turnaround time is too short. For us to receive comments or  
24 response to our comments from your staff, have an  
25 opportunity to consider those, potentially prepare

1 additional comments within a 30-day period, we do not  
2 believe is sufficient. We understand you want to move this  
3 along; we would recommend that you not move as quickly as is  
4 being proposed. We believe that there is additional data  
5 which is absolutely necessary. And while we appreciate that  
6 you have had to deal with the data available to you, with  
7 all due respect, we would simply say it is insufficient.  
8 Thank you very much for considering our testimony.

9 Chair Muller - Thank you. Fellow Santa Clara,  
10 Greg? And followed by Concord, Jeff Roubal.

11 Mr. Van Wassenhoue - Good morning, Board members.  
12 Greg Van Wassenhoue. I am Santa Clara County's Agricultural  
13 Commissioner. I also have responsibility in Santa Clara  
14 County for our Integrated Waste Management Program and we  
15 have been in a myriad of other responsibilities that  
16 directly relate to some of the issues that we are talking  
17 about with trash. I would like to echo Jody's comments  
18 before me, and also some of the comments that the staff  
19 received. Those are, in general, what we are concerned  
20 about. I can add, though, for agricultural operations in  
21 Santa Clara County, there are several that abut the creeks  
22 that will be listed, and as Chairman Muller knows in our  
23 agricultural operation, there is trash that gets dumped  
24 illegally along those creeks. And I noticed that the photos  
25 at time depict some of those could be illegal dumpings where

1 the picture is taken in April of 2003, and then in April of  
2 2006. In my opinion, that does not represent a temporal  
3 span of time along that creek, especially if our growers  
4 have a May clean-up month every time. So if that length of  
5 time could be expanded over a longer period, we might get  
6 better data, you know, from those photos. But at the  
7 current time, we do not think that the photos are sufficient  
8 enough, as Jody mentioned. We also know that there are  
9 local efforts, I think, in Santa Clara County and the state  
10 that could impact and be a choke point for some of the  
11 sources of this trash. For instance, Santa Clara County is  
12 grappling with a local single use bag ordinance to address  
13 some of the plastic bags that might be caught up in some of  
14 these creeks. That clearly will reduce the amount of trash,  
15 at least in those areas, you know, with plastic bags or  
16 paper bags. But there are other efforts that are currently  
17 underway. There is a state bill that was recently  
18 introduced by Assembly member Browley from Los Angeles down  
19 there that would require a bag ordinance statewide. We  
20 think that some of these choke points ought to be evaluated  
21 in the state comments and state considerations before we  
22 move forward with a TMDL. And lastly, I really like the  
23 comment Board member Singh made about, you know, asking for  
24 the criteria of a 10-mile creek and if you find trash in one  
25 area of it. The staff comment was, well, we look at that

1 particular area and if it is one or more site over a period  
2 of time. But I think we would question whether that one  
3 site still necessitates the entire 10-mile body being  
4 impacted. So those are the comments. We think that the  
5 effort ought to be slowed down a little bit to get some more  
6 input and respectfully offer those comments.

7 Chair Muller - Thank you, Greg. I appreciate  
8 Santa Clara here commenting.

9 Mr. McGrath - Chairman?

10 Chair Muller - Yes?

11 Mr. McGrath - If I could ask two things. You  
12 mentioned a single bag ordinance. What is the current  
13 status?

14 Mr. Van Wassenhoue - There is a model ordinance  
15 being distributed amongst the cities right now for their  
16 feedback...

17 Mr. McGrath - So it is in draft.

18 Mr. Van Wassenhoue - Yes.

19 Mr. McGrath - The second question is, have you  
20 quantified what you are spending in trash removal as any way  
21 to perhaps relate the county's costs to the litter and  
22 justify such a fee, and how big is it? I mean, and I would  
23 assume also that there are some costs in your flood control  
24 facilities associated with -- that you cannot recover. So  
25 what are those costs each year?

1           Mr. Van Wassenhoue - We know what we are reporting  
2 through the NPDES Permit process, the tons that are  
3 collected and the cost, but we do not have that specific  
4 data, I think, that you are looking for. This is, again, a  
5 good point. If we were asked to provide that data, that  
6 might go into the proposal here for this impacted bodies,  
7 and we would be glad to look at that if we were asked.

8           Mr. McGrath - Well, I would like to get everybody  
9 thinking about what they are already spending and where it  
10 comes from in terms of the sources because that may be the  
11 next stage, but I think that is the kind of thinking that I  
12 would liked you to get focused on.

13           Mr. Van Wassenhoue - Absolutely. I think that is  
14 a great comment.

15           Chair Muller - Thank you. Following Jeff will be  
16 Laura Reinhardt.

17           Mr. Roubal - Good morning, Chairman Muller,  
18 members of the Board. I am Jeff Roubal from the City of  
19 Concord, 1950 Parkside Drive there in Concord. I have a  
20 couple of comments about the proposed listing on Mount  
21 Diablo Creek. A significant portion of Mount Diablo Creek  
22 runs through the now closed Concord Naval Weapons Station.  
23 The City of Concord is currently preparing a Concord  
24 Community Re-use Plan for civilian use of this base. As  
25 part of the planning process, the City is conducting an

1 environmental review of the base in accordance with the  
2 California Environmental Quality Act. Those environmental  
3 studies include ongoing investigative studies of that  
4 portion of Mount Diablo Creek that traverses the inland  
5 portion of the base. These studies include investigations  
6 of the Diablo Creek's water quality. As part of that  
7 effort, the city's consultants have prepared an interim  
8 report containing five technical memoranda, studying various  
9 aspects regarding the condition of the creek. One is  
10 entitled Sediment Transportation Assessment of Concord Naval  
11 Weapons Station Inland Area, dated September 2, 2008. I  
12 have provided a copy of this technical memoranda to the  
13 Board staff. The memoranda does not specifically address  
14 issues of toxicities, but does state in part, in Section 3.2  
15 that suspended sediment concentrations in Mount Diablo Creek  
16 during low flow events are within the range that would  
17 maintain moderate to good fisheries. This conclusion is  
18 limited to the discussion of suspended sediments found in  
19 the creek and other conditions analyzed such as water  
20 quality temperature, rainfall runoff, other factors also  
21 affect the support and maintenance of fisheries in Mount  
22 Diablo Creek notwithstanding unidentified toxins, which may  
23 be present at any given point in time. In 2009, the City  
24 will be conducting additional studies of the creek in the  
25 inland portion of the Concord Naval Weapons Station, which

1 should reveal additional data as to the creek's water  
2 quality. It is our belief that these studies will support a  
3 conclusion that water quality in Mount Diablo Creek is  
4 better than is indicated in the SWAMP test results. The  
5 SWAMP data used to support this proposed listing rely on  
6 four water samples, only four, collected over 80 miles of  
7 creek, and 24,000 acres of watershed. These samples were  
8 taken six years ago, and conditions in the creek have  
9 changed significantly since then. There is better data  
10 coming this year. Further investigative studies of Mount  
11 Diablo Creek are warranted and are underway, but will not be  
12 implemented prior to the Board taking action on this 303d  
13 list. Given the serious ramifications to the City of  
14 Concord, should the Board take this action, the City  
15 respectfully requests the Board defer any determination that  
16 Mount Diablo Creek should be added to the list of impaired  
17 water bodies under Section 303d of the Clean Water Act. Are  
18 there any questions?

19 Chair Muller - Thank you.

20 Mr. Van Wassenhoue - Thank you, sir.

21 Chair Muller - Thanks for the work. Laura,  
22 please, followed by Chris Sommers, Santa Clara Valley.

23 Ms. Reinhardt - Good morning, Chair Muller and  
24 honorable members of the Board. Thank you for the  
25 opportunity to comment on the proposed revisions to the

1 Clean Water Act, Section 303d List. My name is Laura  
2 Reinhardt. I am Policy Associate at Save The Bay. We are  
3 located in Oakland at 350 Frank Ogawa Plaza. I am here this  
4 morning representing more than 25,000 Save the Bay  
5 supporters and members in supporting the staff  
6 recommendations for the proposed additions to the 303d List.  
7 In particular today, we want to underscore our support for  
8 the addition of water bodies proposed for listing due to  
9 trash impairments. As the Board has stated in the past,  
10 trash and plastic debris is a widespread problem in our  
11 region. The public is aware of this. As you know,  
12 thousands of members of our local residents and our local  
13 public, and many of our legislators have submitted comments  
14 to the Board in support of strong regulatory action on trash  
15 pollution. And in 2008, there has been more than 100 media  
16 stories just in our local media about the Bay Area trash  
17 problem. September's coastal clean-up day saw 300,000  
18 pounds of trash removed from Bay creeks and tributaries and  
19 shoreline in one day; 95,000 pounds of that was from Santa  
20 Clara County alone. And we recognize the municipalities'  
21 good intentions and work towards cleaning up this problem,  
22 but as an organization that sponsors regular and extensive  
23 coastal clean-ups, along with other organizations that do  
24 such, we recognize that this barely makes a dent in the  
25 problem. Given an expanding regional population, it is



1 critical that we address trash impairments now. Over the  
2 past decade, this Board has shown its support for tackling  
3 the region's trash problem. The draft staff report for the  
4 2002 303d revisions stated that -- and I quote -- "The  
5 Regional Board intends to elevate the management of trash in  
6 watersheds as part of this 303d List review process, and  
7 finds the trash threatens to impair water quality in all  
8 urban creeks, lakes, and shorelines in the San Francisco Bay  
9 Region." The report included an explicit directive from  
10 municipalities to assess and address trash hotspots in their  
11 jurisdictions. Unfortunately, there has been little  
12 progress made. To date, our region has one listing due to  
13 trash, Lake Merritt, listed since 1998. And in contrast to  
14 the other major urban area in California, Los Angeles, which  
15 has listed 34 sites as trash impaired. The staff now has  
16 well documented evidence of trash degradation for several of  
17 our regional water bodies, and this year's proposed  
18 additions to the 303d List include tributaries and shoreline  
19 regions of the Bay, identified as significantly degraded  
20 through the Rapid Trash Assessment methodology, and through  
21 rigorous review of the photographic documentation. We agree  
22 with the Staff Report that these water bodies clearly fail  
23 existing water quality standards. We further believe this  
24 represents a conservative list. Taking action to list these  
25 water bodies as intended under Section 303d of the Clean

1 Water Act will ensure that they receive the attention  
2 desperately needed to meet water quality standards. Thank  
3 you for your time and consideration.

4 Chair Muller - Thank you, Laura. I respectfully  
5 disagreed a little bit about all the public knows about  
6 trash. Unfortunately, I think a lot of it is coming from  
7 the public and they do not all know about it. I wish they  
8 did, or were aware of it, and we would not have the problem.  
9 Chris, and then followed by Larry, please. Come forward.  
10 Chris has a presentation?

11 Mr. Sommers - I do. I need the password, though.  
12 I am not that close to know.

13 Chair Muller - That is right. Hopefully it is  
14 under three minutes, Chris. He has got a big title and a  
15 big area there. We will give him the privilege.

16 Mr. Sommers - Thank you, Chairman Muller and Water  
17 Board members. My name is Chris Summers and I am the  
18 Coordinator of the Santa Clara Valley Urban Runoff Pollution  
19 Prevention Programs, Watershed Monitoring and Assessment  
20 Program. I am providing comments on behalf of the 13 co-  
21 permittees of the Municipal Storm Water Program in Santa  
22 Clara County or otherwise known as SCVURPPP. My comments  
23 are directed at the proposed listing of creeks in Santa  
24 Clara Basin for trash. Just a little bit of background.  
25 SCVURPPP has been a leader in the Bay Area on trash issues

1 and program participants are really dedicated at reducing  
2 trash and storm water conveyance systems, and protecting  
3 beneficial uses of the creeks and the Bay. We take this  
4 issue very seriously, we have since 2002, when then Water  
5 Board staffer, Steve Moore, really put out a call to action,  
6 as Save The Bay just said, to look at and address the issue  
7 of trash in water bodies. Since that time, SCVURPPP's  
8 participants have identified roughly 200 potential in-creek  
9 and on-land hotspots for trash and to direct assessments and  
10 clean-ups. Participants have conducted over 120 Rapid Trash  
11 Assessments at in-creek hotspots, using a revised version of  
12 the Water Board staff's Rapid Trash Assessment protocol.  
13 Additionally, SCVURPPP continues to evaluate the relative  
14 contributions of trash from sources and pathways in priority  
15 watersheds, and we are implementing full capture treatment  
16 devices today in over 100 spots within San Jose and  
17 Sunnyvale, the two largest cities in the County. And as a  
18 side note, some of my staff were out yesterday in creeks  
19 actually evaluating trash and ran into a familiar face of  
20 Mr. Steve Moore actually in the creek looking at trash  
21 hotspots, as well. Good to know that you still get out  
22 there.

23 Chair Muller - That is not an ex parte thing, is  
24 it? You did not have to go down there to find trash, Steve!

25 Mr. Sommers - SCVURPPP also received an award by

1 the California Storm Water Quality Association for the trash  
2 BMP toolbox that we just recently completed in 2008. Much  
3 of the trash assessment data, as Richard said, for Santa  
4 Clara, has come from SCVURPPP, so we are very familiar with  
5 that data and the usefulness of that information. Based on  
6 our review of the 303d listing, we still see a variety of  
7 issues that were outlined in our comment letter, which you  
8 should have a copy of, and today we would like to expand on  
9 two of the major issues that we see as outstanding. First,  
10 the listings from our point of view are geographically too  
11 broad, as you have heard today; and in the case of Santa  
12 Clara, it actually represents and over emphasizes the worst  
13 case scenarios, and I will explain that in just a second. A  
14 total of nine water bodies, as the County said, are proposed  
15 for listing due to trash. That is about 1,100 miles of  
16 creek, and if you want a relative sense of what that means,  
17 that is from Vegas and back. That is how much space we are  
18 talking about, how much linear feet we are talking about.

19 Mr. McGrath - It does not stay in Vegas.

20 Mr. Sommers - Although we wish it would, probably,  
21 Jim, right? The data used to assess impairment were mostly  
22 collected from SCVURPPP, as I said, and they represent five  
23 100ths of a percent of that 1,100 miles proposed for  
24 listing. All SCVURPPP data, these 120 assessments that we  
25 submitted to the Water Board, were conducted at known trash

1 hotspots, so the representiveness of that entire 1,100  
2 miles, I think, is in question considering that we focused  
3 on the hotspots when we collected data. So it poses the  
4 question, is the very small data set collected from known  
5 trash hotspots representative of this 1,100 miles. We  
6 believe no. And we request that the Water Board direct  
7 their staff to focus the impairment analysis on specific  
8 sites or reaches of creeks that have representative data.  
9 This reach-based listing process is consistent with, and  
10 actually supported by the 303d Listing/Delisting Policy.  
11 This process would allow agencies, including your own, to  
12 focus on limited resources on finding solutions to known  
13 problem areas, instead of entire creek systems. Now, as a  
14 side note, we have collected data in areas that did not meet  
15 the threshold, they were below the threshold for listing for  
16 impairment, that were in the same water bodies that are  
17 fully getting listed now for the entire creek system. So it  
18 is a little counter intuitive that say the entire water body  
19 should be listed when we have data that say some of the  
20 water body is actually supported using the criteria that  
21 they propose. The second comment, and my last comment, as  
22 background, staff released the first version of the Rapid  
23 Trash Assessment, which Richard went over. We tested that  
24 protocol and suggested some revisions to that protocol, and  
25 subsequently we called that the Urban Rapid Trash Assessment

1 because we felt like it needed to be more urban focused. It  
2 is important because we did not go through a thorough  
3 analysis of this protocol, and I do not believe the Water  
4 Board staff has, as well, from an impairment listing  
5 standpoint. We use the protocol really to characterize  
6 hotspots and to determine the relative contributions of  
7 those. This determination of the method to be adequate for  
8 listing for impairment, as well as the thresholds that  
9 Richard went over, I think, is in question because it is a  
10 little bit arbitrary. And if you look at the thresholds  
11 they establish for the virtual RTA, they are actually  
12 different than the thresholds that they established for the  
13 RTA. And so I am not sure exactly why that is, but it  
14 appears to us that there were different thresholds that were  
15 used for the different methodologies. So based on these  
16 issues, we request that the Water Board staff conduct a full  
17 scientific review of the RTA just in the context of  
18 determining impairment of that water body, prior to using it  
19 for 303d listing determinations. And additionally, we  
20 request that, you know, it is another point up here, the  
21 subjectivity of this -- and Steve can speak to this -- it is  
22 subjective, and the perimeters they are using to assess  
23 impairment is very subjective, and we have had many  
24 different people go out and conduct this methodology, and  
25 they get different scores when they go out. And the

1 perimeters we are using are not the counting of trash  
2 perimeters specifically, but the qualitative assessment, the  
3 aesthetic assessment that is out there. So what is dirty to  
4 one person may not be dirty to others, depending on their  
5 relative experience on looking at trash assessments. The  
6 other point is, the high water line is important, as well,  
7 because we are counting trash that is above the high water  
8 line in these assessments. How does that from an impairment  
9 standpoint -- is it actually impairing the water body  
10 itself, I think, is a question that needs to be posed. Is  
11 it bad above the high water lines? In some cases, it is,  
12 yes; but from an impairment perspective, I think there needs  
13 to be -- that needs to be questioned. The other point I  
14 want to make here is this RTA, the applicability of the RTA  
15 in different types of water bodies should also be addressed.  
16 If you have a channelized water body, which in most cases in  
17 Santa Clara County we are fortunate to have natural creek  
18 systems that naturally trap trash, because we have riparian  
19 vegetation in these systems. And so we have done a good job  
20 of characterizing the hotspots within our creeks, and we are  
21 finding that you might not be listing important water bodies  
22 that are channelized or do not have that riparian  
23 vegetation, so that the level playing field, I think, is a  
24 little it questionable here about whether you are just  
25 listing water bodies that are spots or reaches, that are

1 actually in natural condition versus channelized. So just  
2 in closing, I would like to say that SCVURPPP and its  
3 participants openly acknowledge that the level of trash at  
4 some locations and reaches in Bay Area creeks is alarming,  
5 and needs continued attention through a focused and cost  
6 effective management strategy. Over the last five plus  
7 years, we have made significant progress on better defining  
8 the extent and magnitude of trash issues in local water  
9 bodies, identifying sources and pathways, and implementing  
10 trash storm water BMP's. You know, regardless of the 303d  
11 listing, SCVURPPP and its participants will continue to move  
12 forward on implementing an effective strategy that will  
13 certainly reduce the amount of trash entering water bodies  
14 from storm water; however, we encourage the Water Board to  
15 provide consistent and focused direction to municipalities  
16 on the level and location of water quality impacts in  
17 creeks, and the need for enhanced management actions. In  
18 these economic times, none of our agencies can afford to go  
19 after perceived problems of entire water body systems that  
20 are not well defined and have extremely large price tags.  
21 Thank you for your time and consideration and request.

22 Chair Muller - Thank you. Next will be Larry  
23 Kolb. He does not have a big title, but he has a lot of  
24 knowledge. Steven -- I think it is Yentzie (phonetic) from  
25 Chevron. Are you still here? Otherwise, if he is not, the



1 next one would be Robert Cheasty. Okay, go ahead, Dr. Kolb.  
2 Dr. Kolb - Thank you, Mr. Chair and Board members.  
3 I am here to testify in support of the proposed listing for  
4 impaired water bodies as proposed by your staff, especially  
5 listings for trash. I think we all understand the plight of  
6 the cities to whom many requirements would apply right now,  
7 and this is the real goods. They are truly hurting. Some  
8 are understandably unwilling to accept anything that might  
9 cost them more money, but let me remind the Board that all  
10 we are doing today is talking about acknowledging the  
11 problem. We are not mandating a program or schedule, for  
12 that matter, for correcting the problem; that is just sort  
13 of a different issue. To fail to acknowledge the trash  
14 problem would be to have the Board act like the discount  
15 health plan where they touch up your x-rays. You can never  
16 fix a problem by pretending it does not exist. Some of the  
17 local storm water programs are opposed to listings as we are  
18 hearing right now. But I have had many discussions with  
19 various people over the years who privately say the trash is  
20 maybe the most attractive thing for the public to notice,  
21 that they are not volunteering to do it, but, by golly, the  
22 people who pay for this program and see the results. So it  
23 has way more political appeal than anything else in the  
24 storm water program. That is not the same as the -- I am  
25 not alleging that the discharger community wants to do this

1 tomorrow because they do not have the money for it; but you  
2 have to understand that there are some real political appeal  
3 to trash removal. A model that I like would be one where,  
4 as the infrastructure is updated and worked on, that trash  
5 full capture devices would be routinely installed. Ideally,  
6 it might apply to maybe ten percent of a watershed, not the  
7 whole city, but the part -- we all know where the bad spots  
8 are. Some of the comments made to the Board have been  
9 disputing the validity of photography for documenting trash,  
10 and I can say as a -- I am now making a living as a  
11 consultant -- that on behalf of all consultants, I resent  
12 anything as cheap as photography for documenting, but it  
13 really does work. Of all the problems that we have, that is  
14 the most obvious one.

15 Mr. McGrath - But you can go to Vegas and make a  
16 living.

17 Dr. Kolb - Yeah, right. Anyway, the final thing I  
18 wanted to comment is, is the problem getting better or  
19 worse? And in some ways it is getting better. Lake Merritt  
20 has never looked so good since they put in removal devices  
21 around the margins of Lake Merritt. On the other hand, I  
22 think in some important other ways, it is getting worse.  
23 And the reason is that Eastshore State Park is moving  
24 forward, Bay Trail is moving forward, other things like this  
25 are going forward, where we are bringing more and more

1 people to the margins of the Bay, which is where the trash  
2 is. And in conclusion, let me note that the recent call for  
3 so-called shovel ready infrastructure projects would be  
4 ideal for trash removal devices. It would be a deal where  
5 you would have a large number of small projects. The  
6 engineering for these is trivial, they are off the shelf  
7 from the manufacturers. For every dollar you spend buying  
8 one, you spend another dollar which is labor for installing  
9 them, which can be complicated because of other  
10 infrastructure nearby. But I am just saying that, by  
11 listing trash, we are making this more visible, and  
12 increasing the likelihood that some money could be poured in  
13 this direction. These gadgets typically are made of  
14 concrete and stainless steel, they last maybe not forever,  
15 but 50 years or something like that, and the ones that have  
16 been installed, especially a couple -- there is like four of  
17 them around Lake Merritt, but one of them fills up right  
18 away. I mean, it is amazing how much stuff that captures  
19 that is trying to get into Lake Merritt. So with that,  
20 thank you.

21 Chair Muller - Thank you, Larry, for your work and  
22 you wisdom there. I do not know, Steven, were you here, or  
23 did you go, from Chevron? Okay, we are going to grind on  
24 through here. I realize it is noon, but we are going to  
25 keep pounding. So is it Robert, President for Citizens for

1 Eastshore Parks? Are you here? We will hold this card for  
2 a moment. And I am not sure from the Paul Hastings on  
3 behalf of CESP, Jill Yung? And that will be followed by  
4 Michelle.

5 Ms. Yung - Good morning, Chairman Muller and  
6 members of the Board. I am actually here on behalf of  
7 Robert Cheasty, as well. He had to leave, unfortunately.  
8 He submitted a comment letter on behalf of Citizens for  
9 Eastshore Parks, the Sierra Club, and several other  
10 organizations that were noted in the first page of his  
11 comment letter. And he has left me here to talk with you  
12 about the change in the listing for Steege Marsh. And based  
13 on our comment letters, the Board is probably already  
14 familiar with the fact that, for the 2006 303d listing  
15 process, the State Water Resources Control Board staff  
16 considered listing Steege Marsh for a variety of pollutants,  
17 and ultimately recommended listing Steege Marsh for six  
18 pollutants because the observed toxicity was statistically  
19 significant. However, despite finding significant  
20 contamination and impairments, the state will not pursue the  
21 development of TMDL's for Steege Marsh because it elected to  
22 put the Marsh in a sub-category of California's 303d List  
23 for water quality limited segments being addressed. In this  
24 case, the segment will allegedly be addressed by another  
25 program, an action other than TMDL's. Although we have

1 submitted new evidence of the biological impacts of  
2 pollution and some scientific evidence, as well, whether or  
3 not the Marsh is actually impaired is not in question. And  
4 listing Steege Marsh as being addressed by another program,  
5 the state already had to determine that the water is indeed  
6 impaired. The problem with the state's characterization of  
7 the Marsh is its erroneous identification of the  
8 Consolidated Toxic Hotspots Clean-up Program, and the Clean-  
9 up and Abatement Orders that would presumably be issued by  
10 the Regional Board pursuant to that plan as an alternative  
11 program that is, in the words of the state's listing policy,  
12 reasonably expected to result in the attainment of a water  
13 quality standard within a reasonable specified timeframe.  
14 We have spoken with Regional Board staff, who are familiar  
15 with the Toxic Hotspots Clean-up Program, and they have  
16 informed us that they have not issued and have no plans to  
17 issue clean-up and abatement orders pursuant to this plan.  
18 Moreover, the clean-up orders that have already been issued  
19 to clean-up the neighboring former manufacturing sites on  
20 the shore were rescinded by the Water Board, and that  
21 happened before the 303d listing, well before the 303d  
22 listing was actually finalized. So the fact is that no  
23 existing regulatory program is actively addressing water  
24 quality issues in Steege Marsh, and consequently, there will  
25 be no reasonable time frame in which these matters will be

1 addressed. We are informed that the 2006 process was  
2 actually handled by the state, and so we suspect that this  
3 is one of the reasons for the disconnect between what is  
4 actually going on at the Regional Board level and the  
5 decisions the state made in the 303d listing process. When  
6 I was preparing for this presentation, I imagined that the  
7 Board might simply try to replace the reference to the Toxic  
8 Hotspots Clean-up Plan with a reference to the clean-up  
9 being pursued by DTSC, who has since assumed the Board's  
10 former role in the clean-up of the manufacturing facilities  
11 that are on the neighboring shoreland, and that was actually  
12 confirmed in the summary presentation that we had earlier.  
13 And with the exception of meek or slow, though, DTSC has no  
14 plans for actually pursuing any further clean-up of the  
15 Marsh area. If you read the DTSC's orders, they really are  
16 just going to accept monitoring data going forward. And we  
17 actually discussed with DTSC whether or not they thought our  
18 coming here today and submitting comments in December would  
19 interfere with their clean-up efforts, and they did not  
20 really see a conflict with it because they, again, have no  
21 plans to actively remove any of the sediment in the Marsh  
22 area. Similarly, we do not believe the Board should expect  
23 or assume that the excavation work that has already been  
24 done on the site will address the problem. We submitted  
25 scientific evidence that the effectiveness of the

1 excavations is in question, and we provided visual evidence  
2 that the orange mud that was characteristic of the site when  
3 it was well-known to be contaminated, is reappearing now.  
4 And I think that that exhibit may have been left off because  
5 it did not make it in the packet, so I brought another copy  
6 of it today to leave with you. Third and finally, the  
7 studies documenting the distortion of the mud sucker  
8 reproductive organs and the core grass (phonetic) that  
9 produces salt containing mercury were conducted throughout  
10 the entire Marsh, and I brought a depiction of that Marsh,  
11 too, and I am sorry for my low-tech presentation, I did not  
12 realize we would have PowerPoint options. But the entire  
13 Marsh covers this green area, and I will be leaving a copy  
14 of this, as well. The clean-up was along this one sliver.  
15 And there is a significant area of marshland that has not  
16 been addressed. This is a tidally influenced marsh, and so  
17 the sediments travel throughout the area, which is really  
18 over 150-acres, instead of just the 20 some odd acres that  
19 were addressed in the 2006 listing. And kind of  
20 illustrative of that, and the need for addressing  
21 contamination in these areas, as well, I brought one other  
22 exhibit which is -- and again, it will not be very visible  
23 to you now, but I will be leaving it with you -- it is a  
24 school field trip to do a marsh clean-up, and these children  
25 are wading knee-deep in Southwest Steege Marsh, for which

1 there have been no clean-up actions. This area of the Marsh  
2 abuts Sneaker Slough, which is the focus of PCB  
3 contamination clean-up. It has been documented that there  
4 are releases along the slough to assume that basically one  
5 wetland, that the contamination has not moved throughout  
6 there is probably a bit of a leap. And as a parent, I know  
7 I would not want my child running around in the mud there.  
8 And the Board has an opportunity here to make a statement  
9 and to protect the public and the environment. Again, these  
10 actions are not going to conflict with what DTSC is doing,  
11 and by standing by and saying that another program is going  
12 to handle it, we are sending a message that the area is safe  
13 for things like beach clean-ups where children will be  
14 wading in likely contaminated soil. And so we are  
15 encouraging you to consider changing the specific listing  
16 categorization for Steege Marsh so that TMDL's will be  
17 created and more active clean-up can happen in the area.

18 Chair Muller - Thank you. For the record, will  
19 you state your name and who you were representing? I do not  
20 know if I missed that or not.

21 Ms. Yung - My name is Jill Yung. I am an attorney  
22 at Paul Hastings and we represent several of the  
23 organizations that are part of this comment letter, pro  
24 bono.

25 Chair Muller - Thank you.



1 Ms. Yung - Thank you.

2 Chair Muller - Michelle Pla, please. And then  
3 followed by Cynthia Royer. Michelle has a big title also.

4 Ms. Pla - Good morning, Chairman and Board  
5 members. My name is Michelle Pla. I am the Executive  
6 Director of the Bay Area Clean Water Agencies, also known as  
7 BACWA. And I bid you all a wonderful 2009. Before I get  
8 into my comments about Selenium, I would be remiss not to  
9 say that BACWA very strongly supports the de-listing  
10 proposal for Nickel. And I regret to say we did not include  
11 that in our letter, but I hope that that is loud and clear,  
12 and I really appreciate the staff's proposal on that. BACWA  
13 has been digging in to the Selenium listing because of the  
14 great work that Naomi Feger and Barbara Baginska have been  
15 doing in supporting the development of a TMDL for the North  
16 San Francisco Bay for Selenium. And what we have found is  
17 that, based on new information and new data, and new  
18 evaluation guidelines for a TMDL listing, BACWA strongly  
19 believes that the San Francisco Bay is not impaired for  
20 Selenium and that, in fact, it should be reassessed and de-  
21 listed. The primary reasons that the San Francisco Bay was  
22 listed for Selenium was because OEHHA had a health  
23 consumption advisory for eating diving ducks because of  
24 sediment toxicity and egg hatchability for nesting birds.

25 In June 2008, OEHHA changed this Selenium reference dose and

1 changed the background dietary level. And as you see here  
2 on this Figure 2, the impacts of these changes are  
3 significant. I also want to draw you to the bottom line  
4 here which says the sample year, and where the last sample  
5 year, 1990, and then the sample year of 2002, we see  
6 significant changes in what we are finding in the both the  
7 Surf Scoter and the Greater Scaup -- I think that is how you  
8 pronounce it. And in this slide, you also see that these  
9 impacts are also being shown with the white sturgeon tissue,  
10 that the changes in the health advisory and the difference  
11 in the sampling years, we are seeing that there are some  
12 complete differences in what we are seeing in the aquatic  
13 life. There are no sediment standards for Selenium. It is  
14 understood that there are elevated levels of Selenium in  
15 spots in the San Francisco Bay, and this is based on studies  
16 done in 1998 under the Bay Protection and toxic clean-up  
17 program, and based on proposed ambient Selenium sediment  
18 concentration screening values. Nevertheless, there are no  
19 studies which show toxicity due to Selenium. In 2005, under  
20 the clean estuary program, Abusabha (phonetic) and Oigle  
21 (phonetic) reviewed the data and the bases of the listing,  
22 and they concluded -- and I quote -- "Based upon the  
23 overwhelming weight of evidence presented, it is concluded  
24 that Selenium is not impairing the Bay Protection and Toxic  
25 Hotspots Sites that were added to the Section 303d List in

1 2002, and de-listing these sites for impairment by Selenium  
2 is warranted." There are no adopted Selenium standards, but  
3 the U.S. Fish & Wildlife Service and the U.S. Forest Service  
4 have recommended a standard for Selenium. It is a selenium  
5 sediment toxicity threshold. And based on RMP studies of  
6 the Bay, you can see, shown here in Figure 4, that all of  
7 our concentrations are well below this recommended level.  
8 At the time of the listing in 1998, there were no well-  
9 established standards for thresholds for selenium in eggs  
10 for nesting birds, to ensure hatchability. Since then,  
11 there have been recommendations by SKRUPA (phonetic) in 2005  
12 for a no observable effects level, and in the Great Salt  
13 Lakes in 2008. The data collected by the U.S.G.S. Western  
14 Ecological Research Center in Vallejo, which is shown here  
15 in Figure 4, shows that the Selenium concentration in eggs  
16 are well below the egg hatchability levels growth and  
17 survival thresholds that have been coming out of these other  
18 studies. BACWA believes that the original basis of the  
19 listing are no longer a concern for the San Francisco Bay.  
20 BACWA believes that any concerns about fish, whether it be  
21 sturgeon, Sacramento Split Tail, or Salmon, need to be  
22 reviewed. As you can see from our letter, which is dated  
23 December 12, 2008, from pages 10 to pages 15, we are  
24 concerned about the Lindell study and how it is being  
25 interpreted and utilized. We are concerned about the

1 statements made by Becken (phonetic) in his presentation at  
2 a recent Cal Fed conference. We do not believe that there  
3 is evidence that any of the concerns about fish in the San  
4 Francisco Bay are related to selenium. Based on our BACWA  
5 member scientists' thorough review of the current evidence,  
6 and the current data, we present to you Table 6, which we  
7 believe indicates that selenium should be de-listed. We  
8 believe that our position is consistent with the TMDL  
9 listing policy and, as you look at column on impairment and  
10 delisting, we are focusing specifically on the TMDL listing  
11 policy. And we believe this is consistent with Sections  
12 4.1, 4.6, 4.4, and 4.5, that there is no clear evidence of  
13 impairment due to selenium in the San Francisco Bay. In  
14 closing, I want to make sure the Board understand that BACWA  
15 is not diminishing any concerns that there may be about the  
16 agricultural drainage to the San Francisco Bay, or about the  
17 health of the Delta, or about the fish population in the Bay  
18 or the Delta. We understand that there are those concerns.  
19 But we do not believe that those concerns are based on  
20 selenium, and the TMDL process means you are supposed to  
21 list a water body and look at the impairments, and relate  
22 that to a specific pollutant. As this Board knows from all  
23 the TMDL's that you have adopted, the TMDL Program is a very  
24 specific regulatory program that carries with it very  
25 specific rules for how TMDL's have developed, and

1 implementation requirements. And we believed on our review  
2 that the San Francisco Bay is not impaired based on selenium  
3 and should not be subject to a TMDL. And, again, I want to  
4 point out that BACWA's concerns only came out because of the  
5 really good work that your staff has done in pursuing a  
6 TMDL, and the evidence that they have been bringing forward,  
7 which they are obligated to do because it is listed now. So  
8 we do want to thank you for your listening to our  
9 presentation and I am available for questions.

10 Chair Muller - Thank you, Michelle, for that  
11 thorough investigation. Board member Moore?

12 Mr. Moore - Yeah, real quickly, you know, this  
13 sort of reminds me a little bit of the copper TMDL and how  
14 it evolved into eventual de-listing -- or site specific  
15 objective, sorry -- and then the Nickel effort led to de-  
16 listing. I would maybe invite staff's comment, as far as if  
17 it is premature at this point here in 2009 to move that  
18 quickly on de-listing, because there is a process in place  
19 to really collect this information, and then run its course.  
20 Is this kind of interrupting that process, it has got so  
21 much momentum already?

22 Mr. Mumley - This is Tom Mumley, Assistant  
23 Executive Officer. The short answer is yes. We have an  
24 active stakeholder and technical advisory process, very  
25 robust, and we have participation by scientists from

1 U.S.G.S., we have U.S. EPA, Fish & Wildlife Service, key  
2 players weighing in on this. And, indeed, separate from the  
3 listing exercise is response to any listing, includes re-  
4 evaluation, additional assessment of the listing itself, and  
5 then development of appropriate targets for a TMDL,  
6 appropriate TMDL allocations and implementation actions.  
7 That is all in play. And this is evidence that we are  
8 working with -- we do not share this interpretation of those  
9 data, and we prefer to have the appropriate interpretation  
10 of the data be done through this collaborative joint fact-  
11 finding exercise versus in a sort of contested manner that  
12 this presents. The bottom line is, if there is a problem,  
13 we will continue with the TMDL and appropriate actions if  
14 that process demonstrates that, indeed, there is not a  
15 problem. As Board member Moore pointed out, we have  
16 demonstrated in the past that, rather than do a TMDL, we  
17 will promote de-listing. One big issue here we have to take  
18 into consideration is, beyond the current decision related  
19 to listing, is that there is a standard setting exercise in  
20 play. There is a site specific objective or criterion  
21 exercise being led by U.S. EPA for selenium in San Francisco  
22 Bay, and we are basing the development of our TMDL in  
23 concern with that. And so there is still -- the bottom line  
24 is we cannot say at this time, without question, that there  
25 is no impairment of the Bay by selenium, and therefore our

1 proposal is to sustain the listing and resolve it through  
2 the ongoing TMDL effort. But we will elaborate further on  
3 that in our response to the comments.

4 Mr. Moore - Thank you.

5 Chair Muller - Thank you. That is it? Thank you,  
6 Michelle. And Daly City, Cynthia Royer?

7 Ms. Royer - Good afternoon. My name is Cynthia  
8 Royer. I am the Manager of Technical Services and I am here  
9 representing the City of Daly City. I realize your day has  
10 been long. I do not envy your position; it is a hard  
11 decision to make. The Regional Board staff are some of the  
12 best in California, they are innovators, forward thinkers,  
13 and understand regionally the unique issues that surround  
14 San Francisco Bay. That said, we do not always agree on the  
15 process on how to get to the end. While we might agree that  
16 trash is an issue, obviously trash is an issue, it is a  
17 societal issue. Our storm water discharges into Colma  
18 Creek. Colma Creek is one of the creeks that are proposed  
19 to be listed. Trash awareness has increased dramatically in  
20 the last couple of years. Therefore, that issue moves to  
21 the top of the list and, as you know, there are competing  
22 issues in the municipalities, there are competing issues for  
23 competing dollars for the same level of funding. And  
24 although the stimulus package sounds really wonderful, it is  
25 yet to reveal itself. We agree with Santa Clara's comments

1 that Chris had given to you about the number of spots that  
2 were identified on Colma Creek, but to list the entire  
3 creek, to us, is a little premature at this time. There are  
4 since, in the last couple years, there are programs that  
5 have been put in place that specifically go out on a monthly  
6 basis and clean-up the creek. Pictures from a couple of  
7 years ago will vary very significantly with pictures of  
8 today and we would encourage you to seek additional  
9 information. You see it, you verify it. That is, in our  
10 opinion, the more scientific way to approach, other than --  
11 some of the photographs actually -- there are clusters of  
12 rocks that can look -- and I agree, I am not going to  
13 dispute that there is trash in those photos, there is, but  
14 some of those photographs also have clusters of rocks that  
15 appear to be trash, as well. A recent RTA that was done in  
16 August at Colma Creek show that there was not a significant  
17 trash issue for that particular day, for that particular  
18 stretch, for that particular RTA. We do also have the  
19 riparian vegetations that we are aware of, where there are  
20 problem areas. So what we would ask is, give us a chance,  
21 we understand, we can make a difference, but 303d is not the  
22 way to make the different; that puts on -- what will appear  
23 in Colma Creek is it will begin to -- there are  
24 municipalities and there are state agencies, there is open  
25 land, there are county agencies that all discharge into the



1 same creek, it is mixed use that will equal misdirected  
2 action, it will not solve the problem. Right now, we are on  
3 the path to solving the problem, trying to identify who is  
4 responsible ultimately is going to misdirect the action that  
5 is currently happening. So I would ask that you not list  
6 Colma Creek at this time. It is too complicated of an issue  
7 to try and figure out and we are committed, Daly City, and  
8 the others that discharge into that particular creek, are  
9 committed to making a difference.

10 Chair Muller - Thank you. Board member Moore, any  
11 comments?

12 Mr. Moore - Oh, goodness gracious.

13 Chair Muller - Or Mr. Creek Man? I will start  
14 there.

15 Mr. Moore - You want to start with me, okay, so we  
16 do not have anymore cards?

17 Chair Muller - No more cards.

18 Ms. Royer - Oh, great. I am the sacrificial lamb.

19 Mr. Moore - Yeah, no, you can sit down, make  
20 yourself comfortable. Well, obviously very interested in  
21 this. I want to commend staff on a systematic effort to  
22 look at data, and to coordinate with the State Board, and to  
23 kind of standardize the effort. That is something we  
24 struggled with in doing this type of work in the past. And  
25 I have to be honest with everyone, when I saw the site

1 coming up, I composed a nine-page speech.

2 Chair Muller - Time is up.

3 Mr. Moore - And then I went back this weekend and  
4 made a complete, start from scratch, having really looked at  
5 the comments and a total different direction, and came down  
6 to four pages.

7 Chair Muller - We want a copy.

8 Mr. Moore - And there are a lot of issues here,  
9 many dimensions to the matter, but I will drill down just a  
10 couple of paragraphs if the Board would so indulge me, given  
11 my detailed understanding of the matter. So I want to  
12 really acknowledge a lot of the comments. I would liked Ms.  
13 Royer's point about seeing it and verifying it, and so, in  
14 full disclosure, yesterday I took time off work and went to  
15 a couple sites that I assessed just to see how things are  
16 going because, in reading the comments, I get the message  
17 that, oh, well, we really started to address issues and it  
18 is different now, you know. Well, and I ran into Paul  
19 Randall (phonetic) of EOA and I ran into a great gentleman  
20 in the City of Richmond, and learned about efforts underway.  
21 Well, I want to take us back a little bit, you know in 2001,  
22 the Water Board handed this steering wheel on this issue to  
23 the regulated community in the matter of trash, and,  
24 honestly, it seems to me they have been driving with the  
25 parking brake on. And judging from the comments from Contra

1 Costa County, I do not even know if they got in the car.  
2 You know, I will acknowledge trash in waters has many  
3 nuances, many sources, pathways, these issues we got into in  
4 our peer reviewed report on the Rapid Trash Assessment and a  
5 few of the areas that were sampled a few years back actually  
6 do look different today. I will acknowledge that, thanks to  
7 genuine efforts from local communities. But the trash keeps  
8 returning to waters of the state. I visited some sites  
9 yesterday. About half the sites looked better than three  
10 and a half years ago when we wrote the trash report. One  
11 was in Richmond where a City Council member became  
12 interested in directing City resources for better  
13 maintenance. You got my question there earlier about have  
14 you started paying your City staff to go in the creek at the  
15 park, and not just do the park, and not the creek. So those  
16 type of changes seem to be happening. And this particular  
17 site, which was our highest deposition site, you know, we  
18 calculated rates of deposition of trash in pieces per day  
19 for 100-foot of stream, this was one of our worst sites and  
20 it has been transformed in the last six months. And the  
21 City workers there are excited about the positive change.  
22 That's the good news, that there are management measures  
23 that can have measurable change, that are not necessarily  
24 concrete and steel; but here is the bad news, the site  
25 upstream of it was carpeted in plastic litter, so the next

1 big storm is going to blanket this park and that whole  
2 stretch of stream will be covered again. And so these good  
3 folks will be picking up trash out of there again, and this  
4 is a salient point I want to make here. The problem with  
5 the City efforts to date is they rely on well-meaning  
6 citizens and only recently on their maintenance staff, and  
7 in Colma Creek, they evidently use prisoners to hand pick  
8 litter out of waters of the state. There has been very  
9 little structural treatment installed here eight years after  
10 this Board put trash on its watch list for impairment. The  
11 only place where structural treatment is being  
12 systematically installed is at Lake Merritt in Oakland, as  
13 far as the existing urban development. And this is the only  
14 place that this Water Board has listed is impaired by trash.  
15 And, as Dr. Kolb mentioned, these units work wonderfully.  
16 It is no fun picking trash off a trash rack if you are a  
17 maintenance worker; it is a lot easier to drive up with a  
18 vactor truck, and then drive off to the landfill. The  
19 amount of information reviewed by staff for these trash  
20 listings was easily on par with the amount of information  
21 used to justify other listings in the past. You know, these  
22 comments are not music to the regulatory community's ears,  
23 and I acknowledge that. And I want to acknowledge good  
24 points made by the cities and permittees about the uneven  
25 patterns of trash. But I want to make a point to my fellow

1 Board members, that it will not save anyone any resources to  
2 specify certain segments of water bodies; in fact, it will  
3 create a lot more work for everyone on the assessment side  
4 for Water Board staff, and keeping track of these little  
5 spots all over the region, you know, and when I come back to  
6 the important point here, is what is the Water Board looking  
7 for in implementation, in environmental results. The  
8 implementation will quickly focus on the hotspots that the  
9 cities rightfully point out. The bottom of the watershed  
10 sites are decent sites to integrate the effects of the whole  
11 watershed, the whole water body. And to be effective, trash  
12 with its diffuse sources has to be managed with the whole  
13 watershed in mind. So I strongly recommend against micro-  
14 listings, even though scientifically it does not feel right,  
15 policy-wise, programmatic-wise, it is the way to go because  
16 then you can say, "We have assessed the whole watershed, we  
17 can quickly err in on the management areas." I think the  
18 Bay should be listed for trash. I am uneasy about singling  
19 out specific drainages, but the list of waters is regionally  
20 balanced, it sends the right message that plastic debris  
21 inputs to the aquatic ecosystem are absolutely unacceptable  
22 and contrary to three water quality standards in the Basin  
23 Plan. But part of my nine-page speech is about the global  
24 importance that cities in California recognize the impact of  
25 marine debris on the Northeast Pacific Ocean, which is a

1 globally important ecosystem -- globally. So I am going to  
2 come back to earth here a little bit. I disagree with the  
3 commenter's -- I respectfully disagree -- that listings  
4 cause strain on local resources. Funding is prioritized for  
5 water quality impairments in other sources of funding.  
6 Priority is given to impairments, so these listings actually  
7 help get money. So I mentioned it earlier in my question to  
8 Richard, I am disappointed in the lack of data from local  
9 government until the eleventh hour. I certainly want to  
10 recognize Santa Clara in their generous trash survey  
11 efforts. Where in the Sam Hill is the water quality data  
12 from the Permittees of Urban Runoff Permits? This exercise  
13 today before the Water Board pertains to water quality data,  
14 information and results in the water environment that assist  
15 this Water Board in setting its priorities for water quality  
16 improvement to benefit the people of the State of  
17 California. On the face of it, the efforts that I am seeing  
18 from cities is -- they are just criticizing Water Board  
19 staff barely funded broad assessment, which uses statewide  
20 scientific standards. These local governments have been  
21 responsible for meeting the requirements of the Clean Water  
22 Act since 1987 and we have been managing urban runoff this  
23 way for over 20 years. I know you are frustrated because  
24 the lack of funding, and I will get to that. But we are  
25 still wading -- with a W-A-D-I-N-G -- in plastic debris

1 every wet season. I want to shift gears real quick and just  
2 emphasize points that have been independently brought up by  
3 commenter's about infrastructure. The drainage  
4 infrastructure in the Bay Area is aging, in some ways worse  
5 than the sanitary sewer system, and we are ramping up  
6 rehabilitation of the wastewater sewers -- we have been  
7 using the term "shovel ready" -- I do not really like that;  
8 that means you have already gone out to bid and awarded the  
9 contract -- is ready to proceed projects are attracting  
10 federal funding, as demonstrable green infrastructure  
11 projects, and these will create Bay Area jobs. The public  
12 supports projects to provide clean water. We are partners  
13 in this. Water quality treatment devices can be installed,  
14 nickels on the public works dollar. Now, I think it is a  
15 wake-up call to flood control districts, cities and  
16 counties, that urban runoff water pollution is technically  
17 linked to public works drainage infrastructure, and there  
18 are many examples like impervious surfaces, channelization,  
19 pump stations, storm drains in inner creeks, like a fire  
20 hose. Urban runoff water pollution is a function of public  
21 works drainage infrastructure, that needs to be  
22 rehabilitated anyway. And so the point there is that, to  
23 rehabilitate this infrastructure, and make it better protect  
24 water quality, we have to dig up the same streets as we are  
25 for rehabilitating sanitary sewers to prevent overflows. It

1 is the same type of work. It is like painting the Golden  
2 Gate Bridge. Start on the south end, pass the towers to the  
3 north end, and when you are done, go south and pay the \$6.00  
4 toll, start over again. So these expenditures are very  
5 large. I respect that Santa Clara is spending millions of  
6 dollars on trash, but related to my earlier comments, is  
7 that the way we want to manage trash, is to put well-meaning  
8 citizens in creeks, expose them to hazards and pick up trash  
9 every coastal clean-up day? Or do we want to be a little  
10 more systematic about controlling it? I want to cut through  
11 a lot of this stuff. Uh, I just wanted to say, I think, you  
12 know, it has been 22 years since we started doing urban  
13 runoff management. Most of the sanitary treatment works  
14 were built in 11 years under the Clean Water Act, so we have  
15 been doing this twice as long, and it is my opinion that it  
16 is time to design and construct best available technology  
17 for urban runoff, and by coming up with ready to proceed  
18 projects, it means jobs for Bay Area citizens, but we have  
19 to show combined leadership, not have this adversarial  
20 interaction every time we make decisions about urban creeks,  
21 but have a partnership action. We are not interested in  
22 putting widgets in everywhere, we want it to be done in the  
23 same intelligent manner that the local agencies want. I  
24 want to express deference to a lot of good people working in  
25 these agencies, people that I trust and are aware of how



1 things should be, but do not have the money to build it.  
2 And there are no job incentives for them to come forward  
3 with these sentiments to this Board. How about a message of  
4 hope and change instead of fear? You know, to use kind of  
5 the current sentiment. I do believe it is here in 2009 that  
6 we are looking at a new infrastructure-based economy, and I  
7 think it is time for all of us to get with the program, stop  
8 paying lawyers, start paying engineers, and have designs  
9 ready to proceed, that we, the Water Board, can sign on to.  
10 I hope my fellow Board members will join me in directing  
11 staff to incorporate structural trash control into  
12 implementation programs, as we have been urged by Governor  
13 Schwarzenegger's Ocean Protection Council in its November  
14 2008 Resolution. And I have other ideas about the drainage  
15 infrastructure issue, it is not just keeping things out of  
16 the waters, but improving the waters themselves. It is  
17 better to be able to process the urban runoff pollution that  
18 we introduced. So let us look at things, let us exhibit  
19 leadership regionally, in cooperation, and bring green jobs  
20 into the Bay Area economy by buying into the investment in  
21 drainage infrastructure renewal. We have got to do it  
22 anyway, and by augmenting it with water quality  
23 improvements, it will pay off for my daughter's generation,  
24 and future generations, even better than it did last time in  
25 the last century. All I want is for the Bay Area to be a

1 leader in infrastructure economy and to see us be successful  
2 in stemming the tide of plastic debris and recovering San  
3 Francisco Bay's global ecosystem potential. Thanks for  
4 indulging me.

5 Chair Muller - Thanks, Steve, for your thoughtful  
6 comments. Jim?

7 Mr. McGrath - I did not do anything nine pages, or  
8 even three pages, but I gave a lot of thought to this and it  
9 seems that, at the first level, we need to simplify things  
10 and take a little of the fear out of this for local  
11 government. The first question is, is there impairment?  
12 The second question is, do we know exactly where the  
13 impairment is? Well, there is no question in my mind that  
14 there is impairment, that the amounts are going up. And I  
15 would like to link the two questions of how precisely do we  
16 need to know how widespread the impairment is versus when  
17 should we begin doing the reasonable things that need to be  
18 done? We could certainly direct our staff to narrow down or  
19 do further investigation to answer the widespread question,  
20 or to estimate it based on urbanization. But the single  
21 comment, when I read through, that I found the most  
22 persuasive was by a man named Michael Cox, and he cautioned  
23 us against diverting resources from pollutant to clean-up to  
24 fake transport studies. I do not want to do that. I want  
25 to make sure that we continue to do what we are doing on the

1 clean-up, but smarter. We know enough right now to know  
2 there is a problem, coastal and stream clean-ups collect  
3 more stuff, not less, each year. There are studies that  
4 show the North Pacific gyre is huge, it is growing, 80  
5 percent of the material is plastic, and 80 percent of it  
6 comes from the land. The California Legislature has passed  
7 legislation looking at persistent plastics; there is no  
8 question that the policy impetus to look at plastics in the  
9 land-based structure is there. And I do not want to stop  
10 and say, "Well, exactly what stream? And exactly what  
11 stretch?" Local government came to us last March on the  
12 General Permit, and they said, "Give us flexibility, do not  
13 do things to us that demand we do things." Well, I am going  
14 to turn that around. What is local government willing to do  
15 if we give you flexibility? Are you willing to, using  
16 Steve's analogy, take off the parking brake? What kinds of  
17 solutions are within the control of local governments that  
18 go beyond the standard regulatory mechanism? Well, my  
19 question about shopping center was related to the larger  
20 question of local government's fundamental responsibility in  
21 CEQA in looking at land use. Where are you putting the fast  
22 food restaurants? And are there conditions that go within  
23 that involve sweeping the streets and making sure that that  
24 is captured from those? Those things -- that is the land  
25 use planning authority, but it is charged with the

1 responsibility under CEQA to look at those impacts. They  
2 can sweep the streets themselves, they can change their  
3 container and package processes, they all generate sales tax  
4 which local government loves. So you want them in your  
5 neighborhoods, but you cannot ignore their impacts. What  
6 other options? Trash capture devices. As I think Steve has  
7 said, if local governments more effectively collected their  
8 own costs for what trash means to flood control agencies,  
9 and what trash means to your operational staff cleaning it  
10 out, you might realize that trash capture devices in some  
11 areas would save you enough operational cost that they might  
12 make a lot of sense economically. Continued clean-ups. You  
13 guys know the hotspots. We are not telling you that you  
14 necessarily have to put -- if this goes forward -- it would  
15 not say you necessarily have to discontinue clean-ups.  
16 Maybe that is the most effective thing. Maybe you want to  
17 do them three times a year, seven times a year, and show us  
18 how that is working. There are bans like San Francisco did  
19 for polystyrene, 40 percent drop in Polystyrene, kind of  
20 pretty effective. There is bag container fees, locally,  
21 which are under consideration, or statewide. There is the  
22 producer take-back program. But most fundamentally, local  
23 governments have the option of collective action. And  
24 working with the recommendations of the California Ocean  
25 Protection Council, many of these ideas come from there. I

1 have spoken with Brian Baird (phonetic) about those  
2 recommendations; he is the Resources Agency effort. And I  
3 think the list of options that are possible to work with our  
4 staff with the Board members that are interested in trying  
5 to move this forward -- I have to be a little careful  
6 because the administration beyond the recommendations of the  
7 Ocean Protection Council does not have a firm policy. But  
8 this is something that local governments have as options.  
9 And if you begin to look at this, and more efficiency, you  
10 have some tools. And then the last point, as we begin to  
11 look at local government's real infrastructure needs, you  
12 are going to have to grapple with the different run-off  
13 regime, as warming continues in a higher sea level. You are  
14 going to have to change some of those, working where  
15 appropriate trash programs into that infrastructure, and  
16 making sure that you utilize the concerns about impairment  
17 to get you higher on priority lists are in fact solutions to  
18 the problems. So what I want to hear from local governments  
19 is not that these are not perfectly characterized; they are  
20 not. But there is a problem. What are you willing to do if  
21 we give you flexibility that reflects your own concerns and  
22 show us it will work, and show us it will be cheaper? I  
23 mean, I would rather see economic mechanisms here than  
24 regulation, but clearly there is a problem. And I -- in  
25 terms of impairment, I find the evidence here sufficient.

1 Chair Muller - Thank you. Board member Singh?

2 Dr. Singh - You know, I appreciate the passions  
3 from Steve Moore and also Jim McGrath, but in spite of all  
4 that, I would like to caution something. Putting any river  
5 or section of a river, or Bay, or you want to put the whole  
6 Pacific Ocean on the 303d, I think, is a global problem,  
7 international problem. I think staff should take into  
8 account the new photographs and the recent evidence. If  
9 these photographs come from 2002, and there has been some  
10 clean-up [inaudible], and the community of awareness has  
11 come, and various efforts are going on, something like trash  
12 catchments, or installation based on Santa Clara Valley  
13 Water District has been taking place, certain cities and  
14 counties are already making some effort to clean-up; I think  
15 the recent effort, because there are certain criteria that  
16 we must meet to put on 303d List. And when we put it on the  
17 list, the information must be accurate, the data must be  
18 accurate, and must be based upon the current situation. And  
19 I am not saying it is not based on the current situation,  
20 but what I heard from people. So I do believe that we  
21 follow the law and evaluation must be accurate and the  
22 current, before we judge. And there is nothing wrong if  
23 there is a 50-mile long creek and 10 miles of which is badly  
24 polluted with trash, then using that section, rather than  
25 operating a mountain in approachable reaches of the river to

1 include that. If you need more time, rather than February,  
2 to correct and re-evaluate the data in light of the  
3 testimony, so be it. But we want to be correct on this  
4 situation. And we should take into account the various  
5 efforts and maybe ask the cities and counties, and various  
6 agencies and districts to provide the data, what trash  
7 effort they are making, and what progress they are making,  
8 and they will provide that data. What kind of budget they  
9 are spending over there. So there is nothing wrong in  
10 getting a better picture. I do believe that trash, we do  
11 not want. There are also airports in various cities that  
12 ban the plastic bags. In fact, nobody mentioned over here  
13 where the trash comes from. The trash comes because we  
14 people bring the trash over there. We go fish and we throw  
15 all the junk over there. We buy food and sandwich from some  
16 local store, and then throw that over there, the cans. And  
17 public education, I do not know, but there are certain -- a  
18 small group of people who trash the rivers, who trash  
19 certain beaches, and we all pay for it to clean-up. The  
20 city cleans it, or the district cleans it. We are all  
21 paying. There are preventative measures we can take, but  
22 these people -- we discourage these people from throwing the  
23 trash and they have to take their trash bag, and maybe you  
24 could put some penalty -- there are all these signs, there  
25 is \$1,000 penalty if you throw the trash, but still, the

1 trash if there. Nobody enforces it. Maybe put a camera  
2 over there and take some pictures and catch some of the  
3 people and start penalizing, and people will get the  
4 message. I think some public education that trash is bad  
5 for the water, the quality, for the health, for the fish,  
6 and for everybody, for the environment, maybe we need  
7 certain educational system. We can lecture, they spend  
8 money and spend money; certainly, cities are going to try  
9 and we are not against it. Also, the agency goes and  
10 applies and gets the funding, and come up with necessity is  
11 the mother of invention -- come up with better trash  
12 catching devices. Design them. And some of the beaches  
13 which are approachable, or inaccessible reaches of the  
14 rivers, I see in Santa Clara County, they have cans  
15 installed all over the places. The people cannot go to  
16 there to certain beaches, but they have opened it for  
17 fishing and certain areas like that, and I have gone near  
18 Coyote off the Monterey Highway, and I was doing some  
19 [inaudible] [9:49:33] over there, and I see the people are  
20 fishing over there, and what they are doing over there, they  
21 are bringing the sandwich bags from McDonald's after eating  
22 in the can, and they are throwing right there. And also,  
23 there is a trashcan over there, sitting over there, but  
24 nobody is throwing in there. How can we handle this  
25 situation? Who is creating this trash? We are creating the



1 trash. And we are responsible. We should catch some of  
2 these people to clean-up. I know there are some volunteers  
3 that go out over there, and they clean. This is a problem  
4 that we create. We are responsible. We human beings. And  
5 we have to solve this problem. And I am not saying that in  
6 the current economic situation every city is strapped for  
7 money, state government is strapped for money, counties are  
8 strapped for money that [inaudible], I think we have to work  
9 with everybody, and we do not want trash. We do not want a  
10 dirty situation. And we have to work on that. Please  
11 listen to them and I think their comments are justified,  
12 then look over your list. And I would really believe that  
13 we have to be realistic. All this passion is okay, and I am  
14 passionate. I do not want to see the trash. I do not like  
15 trash, nobody likes trash, but still the people throw. I  
16 have seen people driving the car and throw the cigarette  
17 butts out.

18 Chair Muller - I think we all understand that, for  
19 sure, Dr. Singh, thank you.

20 Dr. Singh - Anyway, that was my comment.

21 Chair Muller - Mr. Peacock? Shalom?

22 Mr. Eliahu - Yeah. I just want to say, I really  
23 support the listing of trash as a pollutant, and I think  
24 this is only the first step in that, and we have to work  
25 hard, I think, with the local governments to find a solution

1 how to remove it. And that is hard work, and we have to  
2 cooperate and work with them, and I am sure they all want to  
3 see the trash be removed.

4 Chair Muller - Vice Chair?

5 Vice Chair Young - Well, I would echo my fellow  
6 board members' passionate endorsement of the idea that trash  
7 is a very important issue, both locally and in the Pacific,  
8 the North Pacific gyre is a serious problem, and we are a  
9 part of it. Including trash on our 303d list, not only  
10 starts a process and elevates the visibility of the issue,  
11 it also sends a message that we are going to be serious  
12 about it. I am going to assume that every listing of trash  
13 impairment is not going to necessarily ultimately result in  
14 the TMDL, there may be other mechanisms that solve the  
15 problem earlier; that is fine. But I do not see the  
16 downside to listing these, these areas. I would strongly  
17 support -- well, everyone's comments, but I wanted to  
18 particularly also echo Jim McGrath's comments about creating  
19 an impetus for creative, flexible, effective, and efficient  
20 mechanisms by local governments and local agencies to  
21 address this issue. I think we all support that  
22 wholeheartedly. We want to get the job done as quickly and  
23 efficiently as possible. I do not see that we are creating  
24 any obstruction to that kind of process by listing these  
25 segments. I think we are adding to the impetus to get those

1 kinds of programs going. I know I did a double negative  
2 just then, but bear with me. More specifically, on trash, I  
3 am very comfortable with Rapid Trash Assessment methodology  
4 and the use of photographs and the way staff was careful in  
5 applying the methodology to the photographs. From your  
6 description, it sounded like you did a creditable job, and I  
7 am very comfortable with it. I am also comfortable with  
8 listing areas that are currently requiring continued clean-  
9 up because it means we have a continuing problem. That is  
10 not to criticize or undermine anyone's efforts, but if the  
11 problem keeps coming back, then it is still a problem, and  
12 we need to list it. I do not see any logic for not listing  
13 a whole creek segment if we find a hotspot at the lower end  
14 of a creek; stuff flows downhill. And the implementation  
15 program will hopefully be designed to pinpoint what the  
16 sources are. So I think we take care of our efficiency  
17 challenge in the implementation stage, and not in the  
18 listing stage. Shifting gears from trash for a moment with  
19 respect to Selenium, I enjoyed the reading the proposal on  
20 selenium. I do think we are in the middle of a robust  
21 process that will incorporate these issues, and I do not  
22 think that we should upset the apple cart by turning and  
23 going in a different direction than what we are going on now  
24 with selenium. I think we will get to the right result, the  
25 right scientific result ultimately by pursuing what we are

1 pursuing now, and keeping the listing for now. With PBDEs,  
2 I think you can discern from my comments before that I  
3 question a little bit why we are not listing PBDEs at this  
4 point, but I will look forward to the discussion in the  
5 final document that is brought before the Board about why we  
6 think that we will have additional information in the next  
7 go round that will put us in a better position to make a  
8 good decision. With respect to CO2, again, I mean, this is  
9 a huge global issue, a potential global issue. It is  
10 probably not one that is best dealt with by us. I agree  
11 with the staff's proposal to try to focus the State Board's  
12 attention on the issue and I did bring you something from  
13 Science News that talks about the fact that we did have what  
14 they characterize as an "ocean burp" of CO2 right off of our  
15 coast, which was only the second in the world that has been  
16 documented. So we, again, are in the forefront, but maybe  
17 we do not want to be. I will hand this over to staff. And  
18 I think that is it. Thank you. Thank you very much.

19 Chair Muller - Well, just a tremendous amount of  
20 great comments made, and commenter's, and we all feel your  
21 pain. I do not think there has ever been a person that  
22 entered this room that was not concerned about trash, really  
23 and truly. I mean, we all do, but how do we get there, and  
24 how do we meet the minimums, and enable communities to keep  
25 operating? It is a tough question, but we are going to have

1 to look at that. I think the Vice Chair mentioned about the  
2 selenium and the shorelines and the issues there, those are  
3 very important and there was a lot of topics brought up  
4 today that I think we definitely all have to work on. You  
5 know, going back to the simple things quickly, and then I  
6 will wrap it up here, is I put a lot of this blame right now  
7 on the recycle world, too, really and truly because what has  
8 happened in the recycle world is the price of products  
9 dropping, and I am seeing more and more trash because of  
10 that reason, number one, and number two, when any one of us  
11 in a municipality -- and Sandy, back me up on this -- when  
12 our recycling vehicles come through, I swear to God there is  
13 more crap on the floor than there is in the truck, really.  
14 It is the craziest system I have ever seen, especially with  
15 this horrible high pressure winds that are blowing right  
16 now. Everything that guy throws in the truck is going down  
17 the road and, I mean, not everything, but you know what I am  
18 saying. It is just a tough situation and I think the  
19 further economy downturn in the world with recyclables, I  
20 think we are going to have a hell of a mess out there, and  
21 we are going to see more and more trash being -- they used  
22 to steal it and try to sell it, and now they are dumping it  
23 and giving it to everybody else along the road. And, as  
24 Greg said, in Santa Clara County, the Ag issues, I can see  
25 it coming already, more and more, rural lands are being used

1 as a dump. And tipping fees are getting more and more  
2 expensive, too, but they are trying to meet their expenses  
3 also. So I also believe this is not -- and Larry Kolb made  
4 a great point about we are not mandating anything today, it  
5 is coming down the road some day in the years because we  
6 will probably have to be doing that. But I appreciate  
7 everyone's hard work and input into this. It is not an easy  
8 situation. It is not an easy solution. And as the Vice  
9 Chair said, if we could just set a little bit of an example  
10 in the world that we are trying to make steps forward in  
11 this, we are doing our job, and I think that is our  
12 responsibility. So that is my final comment. Staff, wrap  
13 it up there, and I think you got plenty of new comments. I  
14 think we have heard everybody. We have been fair. And we  
15 will continue to be fair. So thank you.

16           Mr. Wolfe - I will just touch on some of the next  
17 steps. We did spell out that, as you well know, this is the  
18 testimony hearing. We have gotten many comments. We will  
19 go back and combine the comments today, your comments  
20 especially, into that Response to Comments document, and  
21 make any changes to the proposal that you have been working  
22 with. This is a larger process that, just to reiterate,  
23 there already is a 303d List in place for the state, there  
24 has been many listing efforts over the years. And this is  
25 the update of that list. And so, really, the main issues,

1 obviously, are what are the additions because,  
2 predominantly, we are proposing additions rather than de-  
3 listings. There was the case on Steege Marsh on how that is  
4 listed, and we will look at that and try to clarify, and  
5 this is a statewide process, again, as staff pointed out  
6 that each of the regions is reviewing all the material,  
7 preparing fact sheets on all their water bodies, it is an  
8 enormous task. In Federal Regulations, it says this should  
9 be done every two years; obviously, we are in the 2008  
10 listing, already in 2009, the rest of the regions are still  
11 catching up. We are actually the very first region to even  
12 bring it this far, and their recommendations to the State  
13 Board, and then the State Board's preparation of a list for  
14 EPA's consideration probably will not be done until the end  
15 of this calendar year. And then EPA will be considering the  
16 final list for the state of California for "2008" in 2010.  
17 In theory, we should already be starting on the 2010  
18 assessment right now, and there is some work on that. There  
19 have been many discussions with the EPA how maybe this  
20 should be a phased effort, and not all water bodies at once;  
21 but be that as it may, this effort for our region is  
22 attempting to look at all water bodies. We do recognize  
23 that it is a lot of comments, a lot of information. We will  
24 make an attempt to try to respond to those comments and come  
25 back to you next month. It may be, especially given some of

1 the comments of needing more time, that it takes more time,  
2 although I will touch on that one commenter said that they  
3 want more time to be able to review our comments on the  
4 comments. Actually, the comment period basically closes as  
5 of -- the written comments is already closed; this closes  
6 the verbal comments, and then we are putting that altogether  
7 so that we do not have a continual do loop on comments, and  
8 bringing that back with our recommendation. Certainly,  
9 though, there will be likely comments at that hearing. But  
10 nonetheless, we will move forward diligently, respecting all  
11 the comments and attempting to address those as appropriate,  
12 and address your comments. And so right now, just as an  
13 aside, that the other action items for February look a  
14 little bit light, so we would like to try to bring this in  
15 February when the agenda might otherwise be light because we  
16 know the rest of the spring, the agenda gets heavier. So we  
17 will give that our best shot, but we recognize the need to  
18 adequately respond and consider all comments received.

19 Chair Muller - Thank you, Bruce. Thank you,  
20 staff. And thank you to all the commenter's again for this  
21 difficult situation for all of us. So at this time, we have  
22 no other items, correspondence and...

23 Mr. Wolfe - The correspondence is straightforward.

24 Chair Muller - Thank you. And so we will adjourn.

25 Lunch is here for the Board members, quickly.



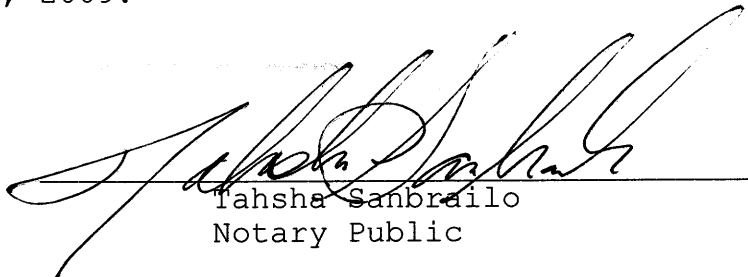
NOTARY PUBLIC  
STATE OF CALIFORNIA ) SS.

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a notary public and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 16th day of January, 2009.

  
Tahsha Sanbrailo  
Notary Public

