

PUBLIC WORKSHOP
STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD

IN THE MATTER OF:)
)
REVISION TO FEDERAL CLEAN)
WATER ACT SECTION 303(d) LIST)
OF WATER QUALITY LIMITED)
SEGMENTS FOR CALIFORNIA)
)
_____)

JOE SERNA, JR., CAL/EPA HEADQUARTERS BUILDING
1001 I STREET
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 6, 2005

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Tam Doduc, Chairperson

STAFF

Mr. Steven H. Blum, Staff Counsel

Ms. Dorena Goding, Environmental Scientist

Mr. Robert Musial, Water Resources Control Engineer

Mr. Craig J. Wilson, Environmental Specialists

Mr. Randy Yates, Environmental Scientist

ALSO PRESENT

Ms. Brenda Adelman, Russian River Watershed Protection
Committee

Mr. Robert Carey, W.M. Beaty & Associates

Ms. Sejal Choksi, San Francisco Baykeeper

Mr. Jim Curland, Defenders of Wildlife

Ms. Cynthia Elkins, Center for Biological Diversity

Assemblymember Noreen Evans

Mr. Arthur Godwin, Merced Irrigation District

Mr. Bruce Gwynne, North Coast Regional Water Quality
Control Board

Mr. John Herrick, South Delta Water Agency

Mr. Craig Johns, City of Santa Rosa

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

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Peter Kozelka, United States Environmental Protection Agency

Ms. Debra Liebersbach, Turlock Irrigation District

Mr. Alan Levine, Coast Action Group

Mr. Lee Mao, Bureau of Reclamation

Ms. Carrie McNeil, Deltakeeper

Dr. Denver Nelson

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

Dr. Cindy Paulson, Brown & Caldwell, Turlock Irrigation District

Mr. Bob Rawson, International Wastewater Solutions Corporation

Mr. Peter Ribar, Campbell Timberland Management

Mr. Mike Sandler, Community Clean Water Institute

Mr. Dan Schurman, Laguna de Santa Rosa Foundation

Ms. Linda Sheehan, California Coastkeeper Alliance

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1 PROCEEDINGS

2 CHAIRPERSON DODUC: Good morning, everyone.
3 We're going to get started. This is the time and place
4 for our public workshop by the State Water Resources
5 Control Board, regarding the proposed 2006 update of the
6 federal Clean Water Act Section 303(d) list. This is the
7 first day of 2 days of workshops on this update.

8 The second workshop will be held on Thursday,
9 January 5th in Pasadena. The purpose of this workshop is
10 to solicit comments on the draft staff report entitled,
11 Revisions of the Clean Water Act Section 303(d) of the
12 Water Quality Limited Segments, dated September 2005.

13 I am Tam Doduc Chair of the State Water Board. I
14 would like to introduce staff primarily responsible for
15 the 303(d) list review and who will be assisting us in
16 this workshop. Craig J. Wilson, Fred LaCaro -- is Fred
17 here?

18 WATER RESOURCES CONTROL ENGINEER MUSIAL: He's
19 still downstairs.

20 CHAIRPERSON DODUC: Okay. Dorena Goding, Robert
21 Musial, Randy Yates. These are staff from the Division of
22 Water Quality. And from the Office of Chief Counsel
23 Steven Blum.

24 The order of procedure will be a brief staff
25 presentation and then comments from interested parties.

1 Please be sure to indicate on the card -- blue cards are
2 available in the back -- which regions you wish to
3 address. If you have not yet filled out a card and would
4 like to speak, please fill one out and bring it up to the
5 staff.

6 The workshop will not be conducted in accordance
7 with technical rules of evidence. We will accept comments
8 that are reasonably related to the 303(d) list review.
9 Written and oral comments are all part of our record. If
10 needed, staff and I may ask questions to clarify the
11 comments presented.

12 To expedite today's proceedings we may limit the
13 length of oral presentation. Judging from the number of
14 cards I have to date, I think we'll go ahead and not
15 impose a standard for now. But it will be very helpful if
16 you could summarize any written comments you've submitted.
17 And if a speaker before you has already addressed your
18 concerns, please just state your agreement and avoid
19 repeating the comment.

20 Today's workshop will focus on comments
21 pertaining to the North Coast Region, San Francisco Bay
22 Region, Central Coast Region, Central Valley Region, and
23 Lahontan Region. Comments will not be limited to these
24 regions, however, so feel free to discuss any aspect of
25 the proposed list.

1 The administrative record for this workshop will
2 remain open until January 17th, 2006. You may submit
3 written comments any time during this period. Following
4 the close of the record, the State Water Board will review
5 all comments. Written responses will be included in the
6 final staff report. Any substantive changes made as a
7 result of comments received will be made available to
8 interested parties before this Board considers the final
9 list for adoption.

10 With that, I will ask staff Robert Musial to make
11 the presentation.

12 WATER RESOURCES CONTROL ENGINEER MUSIAL: Good
13 morning and thank you, Chair Doduc.

14 My name is Robert Musial and I am a water
15 resource control engineer in the Water Quality Assessment
16 Unit. I would like to provide you with a brief overview
17 of the requirements of Section 303(d) of the Clean Water
18 Act and the developments since the last listing and a
19 summary of the methodology we used to develop the updated
20 list.

21 Now, the Clean Water Act Section 303(d) requires
22 States to identify waters that do not meet applicable
23 water quality standards after the application of
24 technology-based controls. This list is commonly referred
25 to as a 303(d) list or the list. The list must identify

1 each water body not meeting standards and specify the
2 pollutant that exceeds the standards.

3 The list was last revised in 2003. A schedule
4 prioritizing total maximum daily load development must
5 accompany the list. A significant development since the
6 last list revision of 2003 is the Water Board's adoption
7 of apology -- excuse me, of a policy which, for one thing,
8 establishes listing requirements.

9 On September 30th, 2004, the Water Board adopted
10 the water quality control policy for developing
11 California's Clean Water Act Section 303(d) list. The
12 listing policy identifies the process by which the Water
13 Boards will comply with the listing requirements of Clean
14 Water Act Section 303(d).

15 The policy became effective in December 2004.
16 The objective of the policy is to establish a standardized
17 approach for developing California's list with the overall
18 goal of achieving water quality standards and maintaining
19 beneficial uses in all of California's surface waters.

20 The policy outlines a weight-of-evidence approach
21 that provides the decision rules for different kinds of
22 data, an approach for analyzing data statistically and
23 requirements for data quality, data quantity and
24 administration of the listing process.

25 The policy requires that all waters that do not

1 meet water quality standards be placed on the list. There
2 are 2 categories -- excuse me, two categ -- tongue tied.
3 There are 2 categories of the list and they are number 1,
4 waters still requiring a TMDL; and 2, waters where the
5 water quality limited segment is being addressed.

6 In order to develop the proposed list, the Water
7 Board solicited, assembled and considered all readily
8 available data and information. A public solicitation of
9 data and information began in April 2004 and concluded in
10 June of 2004.

11 All data and information that became readily
12 available to Water Board staff -- in this case staff --
13 were made part of the administrative record and considered
14 in the development of the proposed list. The data
15 received generally covered the period of 2001 to early
16 2004. Some data were submitted that addressed pre-2002
17 listings.

18 Data through March 2005 from the surface water
19 ambient monitoring program were included in the record. A
20 staff report was developed which, among other things,
21 contains the additions, deletions and changes to the 2002
22 list. Staff reassessed the priorities established in the
23 2002 list. Based on budgeted resources currently
24 available and the factors presented in Section 5 of the
25 listing policy, staff recommended the schedules for

1 completion of TMDLs in Table 9 of the staff report.

2 All other waters not presented in Table 9 are
3 recommended for completion by 2019. The 2002 list has
4 1,883 water-body pollutant combinations. The
5 recommendations presented in Table 5 of volume 1 of the
6 staff report would increase by 287 the water-body
7 pollutant combinations.

8 I will conclude by saying that we are looking
9 forward to the comments we will be receiving today. And I
10 would like to add that the comment period for the proposed
11 list has been extended to January 17th in order to allow
12 more time for the public review -- for the public to
13 review the list and associated documents.

14 If you have any questions at this time or at this
15 point, Mr. Craig Wilson and I would be happy to address
16 them.

17 Thank you very much.

18 CHAIRPERSON DODUC: Thank you.

19 The numbers of cards are increasing. With that,
20 we'll begin with comments on Region 1, the North Coast
21 Regional Water Board starting with Bruce from the North
22 Coast Regional Water Board. Could you please identify
23 yourself for the court reporter.

24 MR. GWYNNE: Yes. Good morning, Chair Doduc.
25 I'm Bruce Gwynne from the North Coast Regional Water

1 Board. And I am representing the staff. I imagine you're
2 in receipt of the letter from our executive officer to the
3 State Board. We have no further information to submit
4 today. I've been sent here to make sure you have an
5 informed person who's familiar with the watersheds of the
6 North Coast Region available should you need any
7 clarification either on our memo or on the issues that
8 come up before you today.

9 I've worked for the North Coast Region since
10 1991. I have helped the State since that time in their
11 compliance with Sections 305(b), 303(d) and 303(e) of the
12 Clean Water Act. And in addition between 1991 and 1998, I
13 administered all of the region-wide monitoring programs
14 for the north coast region.

15 Thank you.

16 CHAIRPERSON DODUC: Thank you.

17 Linda Sheehan.

18 Ms. Sheehan, you had identified you wanted to
19 address all regions. Did you want to do it individually
20 or all at once?

21 MS. SHEEHAN: No, I can wait and do it later,
22 towards the end.

23 CHAIRPERSON DODUC: Okay.

24 Mr. Craig Johns.

25 MR. JOHNS: I guess that doesn't go up any

1 further now.

2 Good morning, Madam Chair. My name is Craig
3 Johns. I'm here on behalf of the City of Santa Rosa
4 today. First, we'd like to thank staff and particularly
5 Craig Wilson for their tireless efforts on what is a very
6 comprehensive and exhaustive review of the existing list,
7 and no doubt substantial data that went into their
8 decisions on both sides of listing and delisting
9 recommendations.

10 Santa Rosa has 3 points of disagreement with the
11 staff's recommendations, one request for clarification and
12 one major point of agreement with the recommendations that
13 your staff had provided.

14 The first one has to do with Santa Rosa Creek and
15 the specific conductance listing. The listing for Santa
16 Rosa Creek for connectivity was based on exceedance of the
17 basin plan. However, the basin plan connectivity
18 objectives for the Russian River Hydrological unit are for
19 a upper and lower main stem Russian River.

20 The objective applied to Santa Rosa Creek for the
21 upper Russian River in the footnote to the basin plan says
22 that the Russian River main stem river upstream of its
23 confluence with the Laguna de Santa Rosa as far as its
24 designation. Santa Rosa Creek is not tributary to the
25 Russian River upstream to which this objective applies,

1 and therefore this objective cannot and should not be used
2 for a basis of including Santa Rosa Creek on the 303(d)
3 list for connectivity.

4 The second point of disagreement is for the
5 Russian River Guerneville hydrological sub-area pH
6 listing. The fact sheet states that the focus of the
7 listing should be on Pocket Canyon Creek, because that's
8 where the sampling was limited, because Pocket Creek is a
9 tributary to the Lower Russian River within the greater
10 Guerneville HSA.

11 However, the listing that's been proposed by
12 staff is for the entire Guerneville HSA. The State Board
13 staff recommendations and fact sheet provide no evidence
14 that other waterbodies in the Guerneville HSA, including
15 the Russian River, are pH impaired. Therefore, if the
16 State Board wishes to list, they should limit the listing
17 to Pocket Canyon Creek only for pH, and not the entire
18 Guerneville HSA.

19 Lastly, on the Laguna de Santa Rosa mercury
20 listing, Santa Rosa disagrees with the staff
21 recommendation here because the listing is based on
22 screening values that were developed by Brodberg and
23 Pollock ultimately used by OEHHA, which we believe are
24 inappropriate for this particular listing.

25 In their report, Brodberg and Pollock state

1 specifically that the screening value approach is
2 recommended simply to identify chemicals of contaminants
3 in fish at concentrations which may require additional
4 review and study. However, the screening values are not
5 intended to be levels at which consumption advisories
6 should be issued.

7 Furthermore, Brodberg & Pollock note that the
8 U.S. EPA screening value for mercury is actually .6 ppm,
9 which is double the screening value used by staff in this
10 particular recommendation of .3.

11 When you look at the data for this particular
12 water segment, only one value in the Laguna exceeds the
13 U.S. EPA screening criteria, and this one exceedance does
14 not meet the listing policy minimum requirements.
15 Therefore, it should not be listed at this time for
16 mercury exceedance.

17 Our request for clarification goes to how some of
18 the specific waterbodies and segments and hydrological
19 units are referred to. Only in Region 1 the State Board
20 staff recommendations and fact sheets state the
21 hydrological area, hydrological unit and hydrological
22 sub-area as appropriate for individual waterbodies.

23 For example, the mercury listing that I just
24 mentioned for the Laguna has Russian River hydrological
25 unit, middle Russian River hydrological area Laguna de

1 Santa Rosa under the water segment in Table 6. For all
2 other regions, based on our review, only the specific
3 waterbody is listed. This leads to 2 possible
4 interpretations for Region 1 recommendations, which should
5 be clarified to avoid ambiguity in the future.

6 One is that only the specific waterbody is
7 recommended for listing, or 2 the waterbody and its HA and
8 HU are recommended for listing. We would ask the staff
9 clarify exactly what the intent is.

10 Finally, our major point of agreement is the
11 staff's recommendation to delist the Laguna de Santa Rosa
12 for nitrogen and phosphorus. As a point of just minor
13 background, the State Board recommended at the last
14 listing to actually delist the Santa -- Laguna for
15 nitrogen and phosphorus. This decision was ultimately
16 overturned by U.S. EPA for reasons which the City does not
17 agree with, and which ultimately your staff has gone back
18 and reviewed and ultimately decided that their original
19 recommendation in the decision by this Board a couple of
20 years ago was correct and has decided to recommend to you
21 to delist again the Santa -- Laguna for nitrogen and
22 phosphorus.

23 We do believe that the fact sheets should reflect
24 more of the basis for staff's recommendation and decisions
25 so that when this issue is finally submitted to EPA for

1 their consideration they'll be more in the record. We
2 will be submitting further information on the technical --
3 specific technical issues which we think would help
4 bolster the record.

5 And with that, I thank you very much.

6 CHAIRPERSON DODUC: Thank you, Mr. Johns.

7 Any clarifying questions?

8 Mr. Dan Schurman.

9 MR. SCHURMAN: Good morning. My name is Dan
10 Schurman. I'm the executive director of the Laguna de
11 Santa Rosa Foundation. I'm joined here today by Dr. Anna
12 Sears our Research Director. Laguna Foundation is a
13 nonprofit organization founded in 1989 that organizes and
14 manages restoration planning, research and implementation
15 projects in and around the Laguna de Santa Rosa.

16 Most recently the Foundation has been leading
17 local efforts to control invasive Ludwigia in the Laguna.
18 This weed has spread very quickly through the Laguna's
19 shallow waterways creating broad concerns for public
20 health, environmental integrity and flood control. Dense
21 growth of Ludwigia provide protective habitat for mosquito
22 vectors of West Nile Virus filling in wetlands and
23 displacing native vegetation.

24 We are currently coordinating a massive publicly
25 funded program to address the worst impacts of this

1 infestation. In July and August of this year, more than
2 100 acres of channel and floodplain were treated with
3 herbicides and 4,500 tons of plant material were removed
4 from the system.

5 Ludwigia research and control has already cost
6 more than \$900,000 and has been the subject of more than
7 75 news stories in the local press. Considering the
8 magnitude of Ludwigia's impacts, control costs and public
9 concerns, Ludwigia is arguably the worst environmental
10 nuisance in Sonoma county. Biologists working on this
11 system consider it highly unlikely that Ludwigia could
12 grow at the observed rate and magnitude without the
13 bio-stimulatory effects of excessive nitrogen and
14 phosphorus levels found in the Laguna.

15 The current regulatory standard for impairment is
16 based on the presence of a bio-stimulatory effect leading
17 to an environmental nuisance. We believe that the current
18 Ludwigia conditions clearly violate this standard.

19 For this reason we request that the State Water
20 Resources Control Board maintain the current 303(d)
21 listing for nitrogen and phosphorus impairment in the
22 Laguna and allow the Laguna's nutrient TMDL to go forward.
23 We believe that removing the listing will undermine
24 long-term Ludwigia control efforts and lead to further
25 environmental degradation, health risks and public

1 expense.

2 There's a long history of contention and finger
3 pointing over water quality impairments in the Laguna and
4 wide recognition that excess nutrients pose a great
5 challenge for Laguna restoration. The TMDL process
6 provides an unbiased assessment of pollution in the
7 watershed and leads to the development of science-based
8 regulations, policy and management recommendations to
9 restore water quality.

10 Without such an official comprehensive and
11 even-handed water quality analysis, it will be difficult
12 if not impossible to move beyond acrimony to identify the
13 most important sources of impairments and fine practical
14 solutions.

15 Maintaining the 302(d) listing of nitrogen and
16 phosphorus will permit this essential data-gathering
17 effort to proceed as scheduled.

18 Finally, public education is at the heart of most
19 efforts to improve water quality, and we believe that the
20 proposed delisting sends the wrong message to the citizens
21 of Sonoma county. Even the news that a delisting had been
22 proposed, caused many citizens to remark to us how
23 wonderful it is that the Laguna's nitrogen and phosphorus
24 problems had been solved, when this is plainly not the
25 case.

1 To raise public awareness and a sense of
2 individual commitment and responsibility among Sonoma
3 county residents requires clear and frank communication
4 about the nature and extent of the Laguna's water quality
5 impairments.

6 Rather than delisting the Laguna for nutrients,
7 we ask that the State Board use its influence to
8 fast-track a nutrient TMDL for the Laguna. This fair and
9 firm base of data will finally allow the community to move
10 forward with restoring the Laguna to health.

11 Thank you.

12 CHAIRPERSON DODUC: Thank you, Mr. Schurman. At
13 this time, I'd like to welcome the Honorable Noreen Evans,
14 Assembly member from the 7th District. Thank you for
15 being here with us today.

16 ASSEMBLY MEMBER EVANS: Thank you very much for
17 allowing me this opportunity to speak to you.

18 I am here to address the September 2005 proposals
19 to delist the Laguna de Santa Rosa as a nitrogen and
20 phosphorus impaired waterway under Section 303. And I
21 wrote the Board a letter a couple of weeks ago. I've
22 spent most of my political career being involved in
23 restoration projects for local waterways, and that
24 includes the Laguna de Santa Rosa and the Santa Rosa
25 Creek, which flows into the Laguna.

1 And against this backdrop, the message that I
2 have for you today and the request I have for you today is
3 very simple. Please reject the proposals to delist the
4 Laguna. The regional board has opposed this proposal,
5 because there is no evidence I believe to support it.

6 The Laguna is unhealthy. We all know that. And
7 we also know that the nutrients are contributing to this
8 unhealthy condition. Absent a compelling reason and solid
9 scientific evidence, I believe that the State Board should
10 not take any action that could potentially make things
11 worse in the Laguna. And without scientific evidence,
12 solid scientific evidence, to support it, delisting the
13 Laguna could potentially create an arbitrary precedent
14 that could possibly damage efforts to restore other
15 waterways throughout the State of California.

16 What I mainly want to impress upon you today is
17 the importance of the Laguna to the people that I
18 represent in Sonoma county. In 1990, Sonoma county voters
19 passed a tax initiative underwhich they taxed themselves
20 to restore and preserve open space and agriculture in the
21 County of Sonoma. That initiative specifically identified
22 the Laguna de Santa Rosa as an area that would be
23 protected by this tax.

24 More recently the community has come together to
25 craft a plan for Laguna revival and it has been very, very

1 active in trying to eradicate Ludwigia within the Laguna.
2 State and local governments have contributed nearly \$2
3 million in support to the plan to restore the Laguna de
4 Santa Rosa.

5 The Laguna serves a number of different roles in
6 Sonoma county. It features prominently flood control,
7 wildlife habitat, environmental education, public
8 recreation and wastewater discharge.

9 The biggest challenge that I think we have facing
10 the Laguna de Santa Rosa is the need for proper
11 restoration and proper management, so that no one of these
12 uses dominates to the destruction or the detriment of the
13 other uses. And the effectiveness of this collective
14 effort and the use of public funds that we have all
15 contributed from the local to the State level rests on
16 maintaining the 303(d) listing, I believe, because the
17 Laguna's problems are closely related to the nutrient
18 impairment.

19 Without nutrient control the Laguna will continue
20 struggling with its current challenges, and they are big
21 ones, and they are very expensive and they also have a lot
22 of risks to public health. Elevated nutrients have been
23 contributing to the growth of Ludwigia which is extremely
24 invasive and destructive. This plant has altered a
25 number -- a large portion of the Laguna's ecosystem. And

1 it's extremely difficult to remove and eradicate. It's
2 accelerated sedimentation. It's decreased flood control
3 capacity in the Laguna. And because of its impacts, it's
4 actually inhibiting our ability to control West Nile
5 vector.

6 My community locally is focused on finding
7 solutions for the flood control and the West Nile
8 challenges in the Laguna as well as its impaired status.
9 My colleagues and I in the Legislature are also intent on
10 addressing these and similar issues statewide. And I
11 believe that delisting a nutrient-impaired waterway like
12 the Laguna would be inconsistent with the completion of
13 the work that we're trying to do both locally and
14 statewide.

15 Many of my constituents are here today to urge
16 you to reject this proposal. I am proud to join them, and
17 I thank you very much.

18 CHAIRPERSON DODUC: Thank Assembly Member Evans.

19 Mr. Denver Nelson.

20 (Thereupon an overhead presentation was
21 Presented as follows.)

22 DR. NELSON: Good morning. My name is Denver
23 Nelson. I'm a retired neurosurgeon from Eureka,
24 California. I've lived there about 30 years. I've had a
25 place on the Klamath River for about 25 years. I make

1 many trips up and down the river in my boat to fish and to
2 take people up the river. I'd be happy to take you up the
3 river if you ever come up there. It's a beautiful place.

4 I'm here to ask you to follow the staff's
5 recommendation and list the Klamath River as sediment
6 impaired. This is a picture at the mouth of the Klamath
7 River. I've worked on other sediment TMDLs in the north
8 coast area. And I have to say I was somewhat taken aback
9 to realize that the Klamath itself was not listed as
10 sediment impaired. I hope that this current list will
11 rectify that situation.

12 --o0o--

13 DR. NELSON: The Klamath drains about 10 million
14 acres. The Klamath River itself starts up here at the
15 outflow of Upper Klamath Lake and goes about 200 miles
16 down to the mouth. I'm going to show you a series of
17 pictures of the Klamath River and the sediment produced
18 between Weitchpec, which is right here and the mouth,
19 which is down here.

20 --o0o--

21 DR. NELSON: Almost every river, some of them
22 aren't even named on this slide, between the Oregon border
23 and San Francisco Bay are listed as sediment impaired.
24 For reasons that are not clear to me the Klamath was not
25 listed. The Smith is a different geologic type and

1 probably should not be listed ever. But the Klamath
2 clearly is sediment impaired. The problem now is that the
3 data to make the listing is hard to come by because there
4 is no historic data.

5 --o0o--

6 DR. NELSON: So I decided I would try and
7 convince you with pictures. This is a 1948 picture of the
8 Klamath River. This is Klamath Glenn. This is the river
9 about the lower 30 miles up to this point.

10 At this point, there had been no logging. This
11 is all virgin old growth redwood that you see here. Since
12 that time it's all been logged, and the trees that you'll
13 see in the next slide and subsequent slides are between 2
14 years and maybe 50 years old. Probably the world's
15 tallest trees are in all of these valleys that you see
16 here, but they're now gone.

17 --o0o--

18 DR. NELSON: If you compare this picture, which
19 is this one up here, with the current day picture, here, I
20 think you can see that the river in this older picture is
21 a V shape. There are some bars along the river, but most
22 of the river is water. Whereas in the current day
23 pictures there are hug sand bars all the way up and down
24 the river, and the river is now V-shaped. My point is
25 that there has been a tremendous change in the river and

1 the time between 1948 and now.

2 This is Starwein flat, and I'm going to take you
3 on a little tour up the river in my boat.

4 This is the Starwein Flat. It's actually about
5 40 feet of gravel sediment that wasn't there, 100 years
6 ago.

7 --o0o--

8 DR. NELSON: This was another picture of Starwein
9 flat.

10 --o0o--

11 DR. NELSON: These are some wild cows. To give
12 you an idea of the perspective, this is a cow here and
13 there's a cow way back here. And the size of the cow
14 would lead you to believe that this is about a half a mile
15 of gravel measured several miles long and that's true all
16 the way up and down the river.

17 --o0o--

18 DR. NELSON: This is -- I have a lot of old
19 indian friends on the river and I got some of these
20 pictures from them. They're hard to come by because
21 there's no roads on the Klamath. The only way you can see
22 the Lower Klamath River is by boat. This is an Indian dug
23 out canoe. This picture is from about 1890. You can see
24 the Klamath is V-shaped. There's very little in the way
25 of sand bars. Pay particular attention to this part up

1 here.

2 --o0o--

3 DR. NELSON: There is a current picture of that
4 same area. You can see there's a huge sand bar here now.
5 This area, which was this area up here, was clear-cut
6 about 15 years ago. And then it was burned with a
7 helicopter torch all perfectly legal. I thought it was a
8 little crazy, but they did it.

9 And of course the next winter this whole hillside
10 fell into the river and damned the river. This is now 15
11 years later. You can still see there's raw slides present
12 here.

13 --o0o--

14 DR. NELSON: I don't have a picture of that slide
15 as it happened, but this is a slide about 20 miles further
16 up the Klamath that occurred last year. I tried to get my
17 wife to stand down here at the bottom for perspective, BUT
18 she refused

19 (Laughter.)

20 CHAIRPERSON DODUC: Smart woman

21 DR. NELSON: So you'll have to take my word that
22 this is the Klamath River here, and this is a huge slide.
23 These trees up here are probably about close to 100 feet
24 tall. This slide measures about 300 feet from here to
25 here. Obviously, a source of a tremendous amount of

1 sediment.

2 As far as the cause of it, you can blame many
3 things, but there are spontaneous slides along the Klamath
4 that occur like this all the time. There is an old road
5 that went across here. There's also been some logging up
6 in this area. But I'm not here to put blame on the slides
7 just to point out that there are slides.

8 --o0o--

9 DR. NELSON: This is a about another 1890's
10 picture. Here's a couple Indian dug outs. You can see
11 them -- this is actually all water in the river. This is
12 the slope of the river. There's hardly any bank over here
13 on the other side.

14 And this is a present-day picture of the same
15 area. These trees here are these trees here. I'm having
16 a little trouble with the pointer. But you can see that
17 the river now is completely full of gravel. The only
18 water in the River is over here.

19 --o0o--

20 DR. NELSON: This is the Blue Creek Lodge, which
21 was present until the floods of '55 and '64 took it out.
22 This is the Blue Creek Lodge boat.

23 This is a present-day picture taken just about
24 where this boat is looking down this way. You can see
25 there's a huge gravel bar here. And this is the site of

1 the Blue Creek Lodge over here. There's some more logging
2 activities up here.

3 These trees in this area are probably about 40 or
4 50 years old. There are isolated pockets of old growth
5 left, but most of the trees are logged off.

6 --o0o--

7 DR. NELSON: This is my place up on the Klamath
8 River. I own one of the last old growth redwood trees.
9 It's quite beautiful, I think. This is Surpur Creek. I
10 own the mouth of Surpur Creek here.

11 Surpur Creek is like most of the creeks on the
12 Lower Klamath River, it's full of sediment.

13 --o0o--

14 DR. NELSON: This is a picture from the 1940s of
15 my beach. You can see from the style that it's a fairly
16 old picture. You can also see that the beach at my place
17 was mostly sand and there wasn't much on the other side in
18 the way of a gravel bar.

19 --o0o--

20 DR. NELSON: This is the way it looks now. This
21 is the mouth of my creek. That's my boat. That's my
22 wife. That's my dog.

23 (Laughter.)

24 DR. NELSON: And this is a gravel bar on the
25 other side of the river, which you can see is quite large.

1 --o0o--

2 DR. NELSON: This is a picture of that same clear
3 cut. You can see the gravel bar below it. I believe that
4 part of the reason that there's excess sediment in the
5 river is that clear cuts in that area are usually not
6 yarded as I would like to see them yarded, and they leave
7 huge scars. You can see the yard that was up here and all
8 these tracks going up like this make for a lot of sediment
9 the first time it rains.

10 --o0o--

11 DR. NELSON: This is another picture of the
12 same -- this is my wife and my dog again and this is my
13 boat over here. And this is a picture of the sediment
14 plug that's in the mouth of Surpur Creek. You can see it
15 has lots of different sizes of gravel and rocks.

16 --o0o--

17 DR. NELSON: This is a picture looking down from
18 my place at Surpur Creek. This is an old Indian dug-out
19 canoe. The water -- it's a little hard to tell here, but
20 the water goes from right here over to here.

21 --o0o--

22 DR. NELSON: This is a present-day picture of the
23 same area. This is this right here. And you can see now
24 that there's a huge gravel bar in this area, which was
25 where this boat is sitting.

1 --o0o--

2 DR. NELSON: In the fifties and sixties, there
3 was an excursion boat called the Klamath Queen. This is
4 the Klamath Queen. It's up about where they used to turn
5 around, which was about 30 miles up the river. There's an
6 excursion -- jet boat excursion that goes up there now
7 that only can go up about a 15 miles because the river is
8 too shallow. If you look at this rock right here, this is
9 the district supervisor from Humboldt County Jill Geist
10 and her son, who are sitting about on top of that rock and
11 can you see that the sediment that's on top of the rock is
12 probably 10 or 20 feet now. That's this rock right here
13 where they're sitting.

14 --o0o--

15 DR. NELSON: This is a picture of sediment. And
16 I especially like the picture because this is a Mountain
17 Lion that was wandering around on the beach. I've never
18 seen one on the Klamath River. He just sat there and
19 looked for awhile.

20 --o0o--

21 DR. NELSON: This is a picture of Judge Sawyer.
22 I put it in there because in the late 1800s, of course,
23 there was a lot of hydraulic mining going on in
24 California. And the debris from hydraulic mining were
25 causing floods in the valley and destruction of farm land.

1 And eventually a man named Edwards Woodruff brought a
2 lawsuit against the North Field Mining Company. And it
3 was decided in Sawyer's court.

4 And what Judge Sawyer did was go out and take
5 numerous trips to the mines and took numerous trips to the
6 rivers and looked at all of the sediment that was being
7 produced by the hydraulic mining. And in 1883 he made a
8 ruling that said hydraulic mining was legal, but that the
9 debris produced by hydraulic mining had to stay within
10 your property and could not affect somebody else's
11 property.

12 I put him in there because he did this on the
13 basis of almost no data and on observation. And I would
14 encourage you to go along with your staff recommendations
15 to declare the sediment -- declare the Klamath River
16 sediment impaired. This is more sediment. That's a bear.

17 Thank you very much.

18 CHAIRPERSON DODUC: Thank you, Mr. Nelson.

19 Ms. Brenda Adelman.

20 MS. ADELMAN: Brenda Adelman, Russian River
21 Watershed Protection Committee. Thank you for holding
22 this hearing today.

23 Our group -- and we're a small group based in the
24 Guerneville area. And we have many members who own
25 property in the Lower Russian River but live in the

1 greater Bay Area. Many of them don't live in Guerneville.
2 And we've been concerned about this issue since -- we've
3 been in existence since 1980, and we've been working on
4 this issue since the early 1990s, and we have a lot of
5 concerns. And it might be good if I mentioned which issue
6 I'm talking about.

7 (Laughter.)

8 MS. ADELMAN: Our big concern and the main reason
9 I'm here today is that we oppose the delisting for the
10 Laguna de Santa Rosa for nitrogen and phosphorus.

11 We have not yet submitted written comments, and
12 we'll surely do so by the deadline on the January 17th.
13 We fully support and have signed on to the comments of
14 Nancy Kay Web, but we also fully support almost all of the
15 comments we've heard this morning on the issue, with the
16 exception of Mr. Johns.

17 And we basically were authors of a form letter
18 that went around, that we sent out to about 2,000 people.
19 And I want to say this whole issue has generated a great
20 deal of public concern. And I've seen many of the
21 letters. People have E-mailed me copies of letters they
22 have sent. And I'd be very interested to know what the
23 full response was. I don't think there's anyway of
24 knowing, at this point in time, how many of those form
25 letters were sent in for instance, and how many other

1 letters, because I know there was extensive interest. And
2 I would request that the record, the full record, be made
3 available to the public in some manner. At this point, I
4 don't know how I might access all of that.

5 We support the letter of the North Coast Board in
6 particular the Sonoma County Water Coalition, City of
7 Sebastopol, Russian River Chamber of Commerce, the Laguna
8 Foundation, representative Noreen Evans, and I'm sure many
9 others that we haven't seen yet.

10 There -- one of the major issues for us and for
11 the community is that it is my understanding that the
12 policy on 303(d) listing and delisting indicates that
13 hearings should first be held at regional boards. Because
14 to be quite honest, coming to Sacramento is not an option
15 for a lot of people. So I see myself as being here today
16 representing a lot of people. Can't give you an exact
17 number. But I know that you would have -- had this been
18 held in Santa Rosa, we would have seen a lot more people
19 attending.

20 And there's just great concern that there's a
21 feeling that the -- there's been a bypass of the regional
22 board in a sense. And it's especially important that they
23 feel strongly that this delisting is a mistake. So you
24 not only have the community feeling they have missed out
25 on an opportunity to express themselves directly, but that

1 the regional board feels similarly, or at least that's my
2 interpretation. And I believe I heard that today from Mr.
3 Gwynne.

4 There's so much evidence in the Laguna, anyone
5 who visits the Laguna, looks at pictures of the Laguna,
6 experiences the Laguna firsthand it's already been aptly
7 described by others this morning. It's perfectly obvious
8 that this is a severely degraded waterbody. And there's
9 concern that the dissolved oxygen listing would remain,
10 but dissolved oxygen is not something that gets
11 discharged. Low dissolved oxygen is a result not a cause.

12 And there's widespread belief that the nitrogen
13 and the phosphorus are key stimulants, biostimulatory
14 substances that are creating the problems with the Laguna,
15 as has been mentioned already, and I don't want to, you
16 know, repeat what has already been said in writing or
17 verbally, except just to emphasize it.

18 And it just feels to me like anyone who
19 experiences the Laguna firsthand wouldn't even dream of
20 delisting it for nitrogen and phosphorus until there's
21 been an opportunity to fully explore the sources of the
22 problem.

23 And it's almost as if by delisting, you're asking
24 for a TMDL to precede the listing. And that doesn't -- it
25 isn't what most people consider the intent of the Clean

1 Water Act. Rather the listing is there when you know you
2 have a problem and you need to explore it further.

3 So anyway -- excuse me a minute, I'm just trying
4 to catch up with myself here. I think most of the --
5 there's been a report submitted a couple years back by
6 IOS, which is a report written by Dr. Dan Wickham and Dr.
7 Robert Rawson on the phosphorus loadings from Santa Rosa's
8 wastewater into the Laguna. And it's just been indicated
9 quite extensively that there are large amounts of
10 phosphorus in the Laguna. Santa Rosa's wastewater isn't
11 the only source by any means, but it certainly is a
12 critical source.

13 And basically the document puts forth the concept
14 that this phosphorus is -- and I'm not a scientist, so I'm
15 not the best person to get into this, but there's an
16 interplay between the nitrogen and the phosphorus that
17 would not happen to the extent it does if there wasn't so
18 much phosphorus available in the environment there.

19 CHAIRPERSON DODUC: Excuse me. Let me interrupt
20 and ask the staff, do we have this report in our record?

21 ENVIRONMENTAL SPECIALIST WILSON: The IOS report?

22 MS. ADELMAN: Yes, it was from 2000 and it was
23 used in the last listing process.

24 MS. WEB: It's an attachment to the web comments
25 and Mr. Yates has it now on a CD.

1 CHAIRPERSON DODUC: Could you please identify
2 yourself for the court reporter.

3 MS. WEB: My name is Nancy Kay Web. And I've
4 submitted comments and attachments that are on the CD.
5 And I think Mr. Yates has them at this point.

6 CHAIRPERSON DODUC: Thank you. Please continue.

7 MS. ADELMAN: And I'm going to basically wrap-up.
8 It's kind of ironic, there's a task force that was alluded
9 to by Dan Schurman that consists of many governmental
10 entities looking for a proposed solution to the Ludwigia
11 problem, and a great deal of money has been pledged. The
12 City of Santa Rosa has pledged \$150,000 to help in their
13 part of the this task force. And yet, on the other hand,
14 they are opposing or supporting the delisting and it just
15 seems to me that there's kind of a disconnect there.

16 I definitely support fast track for the TMDL.
17 And I think it's a critical problem. I think that the
18 Laguna is a critical resource for many reasons. And
19 living in Guerneville I can tell you, while we haven't had
20 a major flood in a few years, it could come any year now.
21 We're due for another big one. And the more water that
22 can be absorbed by the Laguna, the less flooding there is
23 in Guerneville. And we've had some devastating floods
24 down there.

25 And I'm deeply concerned that this Ludwigia

1 problem is going to exacerbate the problems in our area,
2 not to mention the other problems, public health problems,
3 impacts on recreational values, economic values in the
4 lower river. All of these things are impacted by the
5 situation in the Laguna that needs to be addressed by the
6 303(d) process.

7 Thank you very much.

8 CHAIRPERSON DODUC: Thank you. I appreciate you
9 coming up here for this workshop.

10 I'd like to ask staff to respond the question.

11 ENVIRONMENTAL SPECIALIST WILSON: I'd just to
12 respond to the question about the number of letters
13 received. On the form letter, we've received 213 letters.
14 And on other letters related to the Laguna about 7 or 8
15 letters with much more detailed comments.

16 CHAIRPERSON DODUC: And will the record be
17 available to the public on line?

18 ENVIRONMENTAL SPECIALIST WILSON: On line? The
19 record is not available on line, but we can -- we're happy
20 to open up our records to anybody who would like to review
21 them.

22 CHAIRPERSON DODUC: Thank you.

23 Mr. Mike Sandler.

24 MR. SANDLER: Thank you, Chairman of the Board
25 and Water Board staff. My name is Mike Sandler. I am

1 program coordinator of Community Clean Water Institute,
2 which is a citizen action group based in western Sonoma
3 county. Our office is in Sebastopol. And we run a
4 citizen monitoring program, where we train volunteers to
5 go out and test water quality in rivers and streams
6 throughout Region 1. Our main focus is the Lower Russian
7 River at this time. We also have water quality monitors
8 on Santa Rosa Creek and Laguna de Santa Rosa and several
9 tributaries to the Lower Russian River.

10 I have already submitted and I also brought
11 another copy I'd like to submit today of about 12 pages of
12 comments, and as well, referring to an Excel spreadsheet,
13 which I have E-mailed to the clerk of the Board, but I've
14 also printed out a copy of that, which I'll submit into
15 the record. And for those in the audience who are
16 interested, it is also accessible on our website
17 www.ccwi.org.

18 And so I will jump into just hitting some
19 highlights from some of our comments.

20 First, I'd like to say that we are pleased to
21 have our data cited as lines of evidence in several of the
22 decisions that were made in the 303(d) list revision. I
23 think it's at testament to the growing importance of
24 citizen monitoring. And I was assisted in the compilation
25 of our original data submittal in 2004 by members of the

1 State Water Board Clean Water Team who helped us get some
2 of our data into the right format and hopefully our
3 long-term goals is to make that compatible with the swamp
4 protocols.

5 And I feel, you know, a little bit off the
6 subject, but in the age of diminishing budgets, I feel
7 that citizen monitoring can play an increasingly important
8 role in collecting baseline data to make some of these
9 decisions.

10 And in many cases, we agreed with the way our
11 data was used and we are pleased with that. We would have
12 appreciated a little bit more interaction with the State
13 Board. And hopefully in the future there will be more
14 interaction in terms of what does the data mean, because
15 there were a few areas where we felt our data was not used
16 appropriately.

17 The first one I'd like to mention is the decision
18 to delist Pocket Canyon Creek for turbidity. That's in
19 the Guerneville HSA. The reason that we disagree with
20 that conclusion is that our data is baseline data. We
21 send our monitors out once per month without regard to
22 whether it's a storm event or not. And part of that is
23 due to the goal of the citizen group there, which has
24 provided us with citizen monitors. Their goal is to
25 collect baseline data in anticipation of a timber harvest

1 plan.

2 And the way we collect baseline data is we go out
3 once per month throughout the year. And the standard for
4 listing turbidity is if turbidity is seen to be 20 percent
5 above baseline. So using our baseline data, to show 20
6 percent above baseline doesn't really make sense.

7 We would like to refer the State Board to other
8 data which might show that as occurring or not occurring,
9 and that would be the Russian River First Flush
10 Monitoring. The data that's been collected by the Russian
11 River First Flush would show -- well, we've seen some of
12 that data, and it does show 20 percent above baseline,
13 meaning 20 percent above the data that we've collected.

14 And I actually attached a photo on page 5 of
15 our -- it just looks like brown, but basically that's a
16 photo taken during first flush in 2004, which was October
17 19th. First flush, as you may know, is the first major
18 rain storm of the season usually occurring in late October
19 early November. And about 200 volunteers go out in the
20 Russian River each year and collect data during that
21 storm. It's a good chance to get out there in the rain
22 and see what you're creeks look like when it's really --
23 when the water is really coming down.

24 There's also data available from the Russian
25 River Keeper, which is based in Healdsburg on the Russian

1 River First Flush. And a company, Prunuske Chatham, PCI,
2 based in Occidental, California, they have storm event
3 water quality data in the Jenner area. And we feel that
4 some of that storm-water data could show the high
5 turbidity. But at this point, we would object to the
6 Pocket Canyon being delisted based on our data.

7 The second objection is to the delisting of the
8 Laguna de Santa Rosa for nutrients, phosphorus and
9 nitrogen. And I won't repeat what we've already heard
10 about that. But I would just like to add that we've
11 collected additional data since our original 2003 data.
12 Our 2003 data showed 9 out 12 samples exceeded .1
13 milligrams per liter phosphorus. When we combine that
14 with 2004 and 2005 data, 53 out of 57 samples exceeded .1
15 milligrams.

16 So then in terms of narrative, I have attached a
17 couple of photographs, which were taken by a group called
18 Laguna Preservation Council, and it just shows the
19 Ludwigia plant. And for those of you who are interested,
20 it looks green, and that's because it's a green plant.
21 And also an article here from the Santa Rosa Press
22 Democrat about the spreading Ludwigia. And the little
23 white dot in all the green is Dr. Anna Sears from the
24 Laguna Foundation. She goes around in hip waiters and
25 collects a lot of very important information.

1 My last point regarding the Laguna de Santa Rosa
2 delisting is that millions of dollars of public money have
3 been put towards the eradication of the Ludwigia, and
4 countless hours of staff agency time has gone into that.
5 And just that amount of resources being devoted to that
6 problem should be evidence enough that it's a major issue.

7 Okay. So I want to just go on to a few other
8 points. We do concur with several of the conclusions in
9 the listing and delisting policy -- or listing and
10 delisting recommendations. On page 10 I note the issue of
11 conductivity listing in Santa Rosa Creek and I just want
12 to read that one section.

13 We concur with your recommendation to list Santa
14 Rosa Creek for conductivity. Results seen in our 2003
15 data have now been augmented by data from 2004 and 2005.
16 When we add in our 2004 and 2005 data, and I reference the
17 worksheet, it shows impairment in Santa Rosa Creek for
18 conductivity of 19 out of 24 samples exceeding the 320
19 microSiemen level. So this listing is warranted.

20 And just to put that in perspective with the
21 Laguna de Santa Rosa, 58 out of 62 samples in the Laguna
22 de Santa Rosa were above 320. And Big Sulphur Creek, as
23 well, which is a tributary above Healdsburg also had very
24 high readings.

25 CHAIRPERSON DODUC: Mr. Sandler, are you

1 referring to a different submission, because I don't have
2 that statement on my page 10.

3 MR. SANDLER: I'll have to see. It came out on
4 page 11.

5 CHAIRPERSON DODUC: All right. So it's page on
6 11.

7 MR. SANDLER: It just have been the way it
8 printed, it looks like one of those pages. I'm not sure.

9 CHAIRPERSON DODUC: I just want to make sure we
10 have it in the record.

11 MR. SANDLER: Thank you. I also would like to
12 point out Colgan Creek, which I do mention on page 12,
13 which may be page 13 on yours, Colgan Creek is a tributary
14 to the Laguna de Santa Rosa. And we have found elevated
15 readings for conductivity and phosphorus on Colgan Creek.
16 We have been monitoring Colgan Creek for awhile and
17 thought it was the main part of the Laguna de Santa Rosa
18 and later found it was actually its own creek. So that
19 might merit further investigation by the State Board.

20 And the rest of my comments are listed in
21 writing, so I won't go over those. But those are just
22 some of the highlights. I also agreed with the previous
23 person, Ms. Adelman, that more input from the regional
24 board would be useful and then you wouldn't have to listen
25 to all of us come up here.

1 But, yeah, as you've seen from the 200 letters,
2 the major issue is the delisting of the Laguna, but
3 hopefully this other information was clarified. And I'd
4 be happy to answer any questions that the State Board
5 might have or to work with you further on using our data.
6 And I was very happy to see our data being used. That's
7 the purpose of our work and it makes the volunteers'
8 efforts rewarded when it actually gets put into policy.

9 So thank you.

10 CHAIRPERSON DODUC: Thank you.

11 Mr. Alan Levine.

12 MR. LEVINE: If I live long enough, I'll get down
13 to the level of the microphone. Does it go up?

14 No, it doesn't. I'll rip it apart.

15 My name is Alan Levine, and I represent Coast
16 Action Group. We're signatories to the letter that Ms.
17 Web submitted. And we oppose the delisting of the Laguna
18 Santa Rosa for phosphorus and nitrogen.

19 I have this heartfelt -- I'm struck in my heart
20 by how many passionate advocates there are for this
21 waterbody. I'm used to dealing with water bodies on the
22 North Coast that if you have 4 people that are supporting
23 protection of beneficial uses, it's a big deal. So it's
24 nice to see that that many people are passionate about the
25 Laguna.

1 The reason for the proposed delisting given in
2 the State Board documentation is that there's no numeric
3 standard. And I just want to state that a narrative
4 standard is competent for evaluating the Laguna's nutrient
5 problem.

6 It is possible to administrate this listing with
7 a narrative standard. And such narrative standards are
8 consistent with State and federal law.

9 Now, the complaint is how do we administer this
10 without numbers? The absolute numeric standard is not
11 necessary for the listing. At some point you might want
12 to come up with some standards that you can deal with
13 stuff, but it is obvious and clear that the listing is
14 merited by the narrative issues that have been presented
15 in all the documentation in the file.

16 All that has to be known is that phosphorus and
17 nitrogen are promoting the diminished or polluted
18 conditions that exist in the Laguna, and whether or not or
19 at what level the limiting factor begins probably should
20 be ascertained when the TMDL is done. And I think that's
21 part of what a TMDL is for, to actually delineate what is
22 the actual amount of pollutant that can be allocated as an
23 input and still meet water quality standards, is that not
24 true?

25 The data and science in the record shows that

1 there's absolutely no question that there is abundant
2 oversupply of phosphorus and nitrogen. And this is in
3 tons or hundreds of tons of each pollutant per year.
4 There's a lot of nutrient inputs being put in.

5 There's no question that phosphorus and nitrogen
6 are promoting growth of nuisance plants, and a result in
7 low DO, which is a factor in the -- a factor in the
8 protection of beneficial uses, the co-water fishery.

9 And as part of the nutrient cycle, these
10 pollutants will not allow water quality standards ever to
11 be met, unless they are individually dealt with. Most of
12 the discussion today was about the Ludwigia as a nuisance
13 factor, but we've got to remember that there's a cold
14 water fishery here. There's no spawning in the Laguna,
15 but the Laguna is a fishery transmission channel, and it's
16 historically been used by Coho and Steelhead. And with
17 the existing conditions that fishery component is
18 impaired.

19 The only question is how much is too much? And
20 that's what a TMDL is to be promulgated for. And the
21 assessment and the analytic process in the TMDL that's
22 what you're going to come up with and answer is how much
23 is too much.

24 The weight of evidence shows non-attainment of
25 water quality standards and is evidence in opposition of

1 the proposed delisting.

2 Now, reliance on information in the file from the
3 City of Santa Rosa, the data that they have presented does
4 not support the delisting. And the fact that they present
5 shows over-abundance of the polluting chemicals.

6 Nitrogen and phosphorus are controllable factors
7 in the City's NPDES permit. That's a reason for
8 maintaining the listing, because they're a controllable
9 factor. I want to state that the City of Santa Rosa isn't
10 the only source of phosphorus and nitrogen. There's a lot
11 of agricultural impacts and there's a lot of habitat
12 modification resultant from agriculture that is part of
13 the problem. So everybody eventually is going to have to
14 pitch in when a TMDL is done.

15 The city's own reporting by Merritt Smith
16 Consulting in conclusion show excessive nitrogen and
17 phosphorus, enough to promote growth and be fishery
18 limiting factors. The City, in Merritt Smith's report,
19 argue against the burden of listing nitrogen and
20 phosphorus while maintaining the argument that further
21 study is needed. I would argue that the further study
22 should occur when the TMDL is done.

23 Removal of nitrogen and phosphorus from the list
24 would have the following consequences: I want to point
25 out that it isn't understood by the State Board that there

1 is a TMDL for nitrogen. However, that TMDL is not
2 competent. In fact, it's totally incompetent. It doesn't
3 deal with the proper load allocations and assessments that
4 that TMDL was, I think, promoted and paid for by the City
5 of Santa Rosa. And it just occurred to me that for that
6 pollutant nitrogen for which the TMDL is written, you
7 cannot delist until you attain water quality standards.
8 So if you have a TMDL in operation for a specific
9 pollutant, let's say it was sediment, until the TMDL shows
10 that you met -- or assessment of that waterbody shows that
11 you have met water quality standards, that is being
12 violated, a listing must be maintained.

13 It's a violation of both State and federal law by
14 not listing for all known pollutants. And the quotation
15 is all waters that are impaired shall be listed and all
16 known pollutants shall be considered in the listing.

17 Removal of phosphorus and nitrogen from the
18 listing will lower the emphasis and the need to address
19 those specific factors in the currently degraded
20 conditions. And it will also limit the impetus of dealing
21 with an important nuisance that really is a threat to
22 human health.

23 Aside from the co-water and swimmable aspects of
24 the problem here, we're dealing with a potential hazard to
25 health and people could die. You can't get rid of the

1 mosquitos until you get rid of the Ludwigia. You can't
2 get rid of the Ludwigia unless you want to go in and
3 remove it all by hand, and it comes back really fast
4 because there's lots of nutrients supporting its regrowth.

5 Also, reducing the number of pollutants reduces
6 the possibility for appropriate prioritization, and that's
7 what I was just arguing for. This should be a very high
8 priority project, because of the nuisance factor.

9 And I want to digress here and switch from the
10 Laguna to the Klamath. It's kind of a trick that I'm
11 playing on you here, but there is a connection. The most
12 current and up-to-date and in-depth nutrient studies I
13 think done in the world today are being done on the
14 Klamath River, where you have nutrient laden lakes. And
15 when they discharge, sections of the lower river show
16 immediate response in plant and algae growth, macrophytes
17 like Ludwigia, but not the same plant.

18 And the linkage of the information derived in the
19 Klamath studies and the Klamath is listed in sections as
20 impaired by nutrients. But the linkage of the effects of
21 the pollutants that promote such conditions are very
22 demonstrable and -- it's really obvious what's going on
23 here, but the exact numbers may -- of what are the
24 limiting factors or the numeric standards of what is
25 appropriate is going to be a difficult endpoint to

1 achieve, but scientists are working on that, and they're
2 making progress there.

3 But you may never have an exact endpoint, numeric
4 endpoint, but that also speaks against the delisting
5 problem.

6 And then also a last word on the Klamath, which
7 is also listed as impaired by sediment in the upper reaches
8 but not the lower reaches as you heard before, sediment
9 goes downstream. And the sediments that are impairing the
10 upper aspects of the Klamath River will and have, as you
11 have seen by the pictures, make it to the lower river and
12 the estuary. And impairment of estuarian function by
13 sediments limits the ability in certain life stages of
14 salmonids to survive. Salmon need estuary functions to
15 smoltify.

16 Smoltification is a process where they go back
17 and forth between fresh and saline waters to adjust before
18 they go out to sea. And when the whole place gets filled
19 up, it doesn't work right anymore. And I support the
20 listing of the lower section of the Klamath River also.

21 Thank you very much.

22 CHAIRPERSON DODUC: Thank you, Mr. Levine.

23 Mr. Bob Rawson.

24 MR. RAWSON: Good morning, Madam Chair and staff.

25 My name is Bob Rawson. And I'm a wastewater consultant.

1 And my background is in wastewater and soil
2 bioremediation. I'm a Grade 5 Wastewater Operator, so
3 I've operated or consulted on all of the wastewater
4 facilities that discharge into the Russian River, either
5 as an expert witness, an operator or a consultant basis.

6 And so I'm very familiar with those under all
7 weather conditions, and so I've seen them at their worst,
8 I guess. I'm also one of the authors Brenda Adelman
9 mentioned.

10 On the report by IOS Corporation phosphorus
11 loading and eutrophication in the Laguna de Santa Rosa.
12 Some of that work is incorporated in Nancy Kay Web's
13 document, which I believe you have and its appendices.

14 Particularly, I'm familiar with the Laguna de
15 Santa Rosa, because my company and I were involved in a
16 bioremediation of the Laguna de Santa Rosa in
17 approximately 1999. There was an apple processing spill
18 just to the north of Highway 12 where we used the bacteria
19 we manufacture IOS-500 for bioremediation in oil fields
20 and leach fields and such as that, for restoration a leach
21 fields. But we used it in this case to bioremediate a
22 section of the Laguna. And it actually came back to
23 fairly clear and pristine conditions for a short period of
24 time. And then it went back to its old ways.

25 And so in the course of doing this, I was taking

1 canoe trips up and down the Laguna and seeing the very
2 obvious impacts of algae and Ludwigia growth. So you
3 really don't even have to study this. Just your eyes are
4 enough. As the pictures that were shown of the Klamath,
5 just seeing it is enough, but of course Fish and Game
6 knows and Regional Water Quality Control Board knows and
7 anybody who goes there knows that it's impacted for
8 nutrients.

9 And so recently, as a member of the Board of
10 Northern California River Watch, we negotiated settlement
11 agreement with the City of Santa Rosa. And they agreed to
12 pay \$250,000 for restoration work in the Laguna. And
13 we're going to direct that those funds towards the North
14 Coast Regional Water Quality Control Board for the purpose
15 of a TMDL for nutrients in the Laguna de Santa Rosa
16 specifically for phosphorus and nitrogen and such.

17 And so it seems kind sort of counterproductive to
18 delist something where funds are specifically being
19 earmarked towards making the Laguna better and it's
20 obvious that it needs to be made better.

21 So I'd like to add our concerns, Northern
22 California River Watch and my own to the list of people
23 that signed on to Nancy Kay's letter, and also reiterate
24 what the Laguna Foundation and Noreen Evans, Mike Sandler
25 from the Clean Water Institute, the Coast Action Alan

1 Levine and all those who have spoken, and the other people
2 who have written letters to urge the Board not to delist,
3 and also to look very carefully about any delisting in any
4 of these tributaries to the Russian River, because all of
5 them, at times of the year if you're out there in those
6 storms and those winter periods of time and you're
7 watching, you'll see the sediment and the -- and if you're
8 out there in the summer, like I was in Green Valley Creek
9 2 days ago you'll see the impacts. And they're there and
10 they need to be studied. We need a TMDL.

11 Thank you very much.

12 CHAIRPERSON DODUC: Thank you.

13 Mr. Peter Ribar.

14 MR. RIBAR: Madam Chairman, my name is Peter
15 Ribar representing Campbell Timberland Management from
16 Fort Bragg, California. We manage 185,000 acres for
17 Hawthorne Timber Company in coastal Mendocino county.

18 Back on June 10th, 2004, we did submit some
19 additional information as requested by staff, with respect
20 to data and other reports that we thought were relevant to
21 the issue at hand. And although the staff has used much
22 of our data in this proposed listing, we do not feel that
23 they have used the other reports that we have submitted.
24 And that those reports and the comments of those reports,
25 the cautions contained in those reports, none of that is

1 reflected in the staff report.

2 First and foremost, we don't believe it is
3 appropriate for staff to use the thresholds established by
4 the Sullivan 2000 paper to set regulatory standards for
5 streams in California. The Sullivan paper is a report
6 issued by the Sustainable Ecosystems Institute in Portland
7 Oregon. It has not been the subject to the level of peer
8 review required for publishing in a typical science
9 journal.

10 The development of guidelines based on this
11 document is inconsistent with the staff report that states
12 guidelines were based on scientifically based and
13 peer-reviewed information.

14 Additionally, there's no evidence to suggest that
15 Coho in northern California respond to fluctuations in
16 water temperature the same way that Coho respond in other
17 parts of the Pacific northwest.

18 In fact, the Sullivan paper contains cautions not
19 to extrapolate their data for use elsewhere without
20 validation. In fact, we did commission a report by
21 Stillwater Sciences, a consulting firm, to look at
22 temperature thresholds. And we've submitted this report
23 numerous times, and we're going to submit it again for
24 your edification, because we believe it shows issues that
25 need to be addressed prior to using the thresholds from

1 Sullivan as the threshold for trying to determine whether
2 water temperature is impaired.

3 Therefore, the Sullivan proposal or approach that
4 they have advocated -- I think, and our company, believes
5 that it has a lot of merit. But it simply needs to have
6 additional peer review and studies in California to
7 validate its use here.

8 The staff report also does not consider the
9 inherent potential of a watershed's temperature regime.
10 As evidenced by the data we submitted in 2004, there's
11 tremendous spatial and temporal variability within these
12 coastal watersheds.

13 Then why would the staff attempt to apply a
14 single value, one-size-fits-all-threshold for temperature
15 throughout an entire watershed. Clearly, there are select
16 stream reaches that may never meet this 14.8 Celsius
17 degree threshold. Because there are simply -- there are
18 landscape features, such as geologic formations,
19 vegetation characteristics or the simple orientation in
20 the stream that would weigh on that.

21 Nowhere in the staff report is there
22 acknowledgement that the proposed targets may not be
23 achievable at all places at all times. It just simply
24 doesn't occur.

25 We also believe that the analytical methods used

1 in the staff report are also somewhat flawed. Listing
2 determinations based on the percentage of occurrences
3 pooled by watershed that exceed this 14.8 degree Celsius
4 creates bias.

5 For example, 9 -- for example, since 2002,
6 Campbell has removed the thermographs from historic
7 locations deemed cool. And we went ahead and put them in
8 the other places that we thought were hot in order to try
9 to better isolate and characterize those areas of concern.

10 This, in turn, has substantial effect on the
11 results of the analysis. Without consistent temporal and
12 spatial across a watershed, it does not seem appropriate
13 to pool the data for such analysis.

14 Additionally, Campbell requests the staff to
15 consider whether it is appropriate to pool historic data
16 from the mid to late 1990's in order to characterize
17 today's in-stream conditions. Since 1999 there has been a
18 change in the ownership on the property. There have been
19 increased regulations to regulate and require a greater
20 level of canopy retention along water courses and most
21 importantly simplistic at it might be, trees grow every
22 day and the watersheds in question are continuing to
23 recover from historic practices.

24 We will be providing additional data and we want
25 to thank you for the additional time till January 17th to

1 submit additional comment. We would like to submit some
2 comment and data analysis on Pudding Creek that I think
3 will shed some light on some of the concerns I've raised
4 today.

5 We would like to commend the staff because they
6 have at least drilled down into some of the data that
7 we've provided and tried to determine whether tributaries
8 may be separated from their main stem reaches. And
9 therefore, we would like to support not listing of the
10 10-mile river tributaries along with -- for temperature,
11 along with supporting the non-listing of Big Salmon Creek
12 for sediment and temperature, Usal, Wages and DeHaven
13 Creeks for temperature.

14 We do not support the listing of Pudding Creek,
15 and we will provide additional information why we do not
16 feel that is appropriate. And also we would suggest that
17 we do not support listing for the tributaries for Noyo
18 River that include Hayshed Gulch, Kass Creek and the
19 Little North Fork Noyo River.

20 Thank you for the opportunity to provide some
21 comment and please call us if you have any questions.
22 We're going to submit this report one more time. I hope
23 the staff would look at this and try to evaluate the use
24 of these temperature thresholds, because they bear -- have
25 a large bearing on whether, you know, these exceedances

1 are valid or not.

2 Thank you very much.

3 ENVIRONMENTAL SPECIALIST WILSON: Ms. Doduc.

4 CHAIRPERSON DODUC: Thank you, Mr. Ribar.

5 ENVIRONMENTAL SPECIALIST WILSON: Question. When
6 you submit your comments, could you do an analysis with
7 the unpooled data, are you going to provide that for us?

8 MR. RIBAR: We were going to attempt to do
9 that -- we were going to -- now, that we have the time, we
10 will do that for you, because we didn't have time. We
11 were just trying to throw the stuff around the office
12 yesterday. And we came up with that, and it just looked
13 like that was a relevant factor.

14 ENVIRONMENTAL SPECIALIST WILSON: Thank you.

15 CHAIRPERSON DODUC: The final speaker who wants
16 to speak solely on this Region 1 is Ms. Cynthia Elkins

17 MS. ELKINS: Good morning, Madam Chairman and
18 Members of this State Board. My name is Cynthia Elkins.
19 I work with an organization called the Center For
20 Biological Diversity. And the Center is a national
21 organization that is dedicated to the protection of native
22 species and their habitat. We currently have about 15,000
23 members including thousands of members in California that
24 rely on the beneficial uses of these watersheds.

25 I'd like to keep my comments very brief and just

1 like to mention that we will be submitting our comments in
2 writing. We're working with scientists and other experts
3 right now to complete those. And we'll also submit
4 supporting documentation and evidence to support our
5 comments.

6 As you are probably well aware currently about 85
7 percent of the streams in the north coast are listed as
8 impaired due to sediment and/or temperature impacts. In
9 all of these cases logging on private land is named as the
10 primary source of these problems.

11 Also, as you're aware, your staff has recommended
12 adding one additional waterbody for these pollutants and
13 that being the lower portion of the Klamath River. As Dr.
14 Nelson's photographs and presentations showed, clearly
15 showed the Klamath is suffering tremendously. And we
16 strongly encourage the Board to take its staff's
17 recommendation and add the Klamath River and begin taking
18 the road towards recovering this severely degraded
19 watershed.

20 Unfortunately, we also believe that 2 additional
21 watersheds on the north coast are degraded for one or both
22 of these pollutants. And we're also urging the State
23 Board to include these in the revised 303(d) list.

24 Specifically, we're requesting that Salmon Creek
25 which is a tributary to Humboldt Bay be listed for

1 sediment. And the Bear River, which flows into the
2 Pacific Ocean just north of the Mattole be listed for both
3 temperature and sediment pollution.

4 Both of these watersheds are predominantly
5 managed and owned by industrial logging companies. And
6 like other watersheds that are listed on the north coast,
7 have been significantly logged with intensive even-age
8 management, meaning clear-cutting or other similar
9 methods.

10 While a lot of the damage that we're seeing is
11 caused from historical logging impacts, huge portions,
12 vast acreages of these watersheds have been logged within
13 the last 10 years. And like other watersheds, these are
14 underlain by extremely sensitive geology including Yager
15 formations Wildcat formations and other geological makeups
16 that make them just extremely sensitive. So this has left
17 these watersheds like others tattered and they have many,
18 many bleeding sores and bleeding sources of sediment into
19 those streams.

20 In Bear River temperatures have been measured in
21 the summer well above the maximum threshold for -- the
22 maximum threshold temperatures for Coho and Chinook
23 Salmon. They've been measured at 76 degrees. And Coho
24 actually are completely extirpated from Bear River right
25 now.

1 I'd like to just mention in response to Mr.
2 Ribar, Coho and other cold water salmonids are just that,
3 they're cold water adapted and they cannot live in bath
4 tubs. Mr. Ribar complained about Ms. Sullivan's paper and
5 the fact that it was not peer reviewed. And I'd just like
6 to point out that Ms. Sullivan's paper -- Dr. Sullivan's
7 paper was simply a summary of review -- or excuse me of
8 published literature. And all of the literature that she
9 reviews was indeed peer reviewed.

10 Like I said, just to repeat, Coho have been
11 completely wiped out of Bear River and Chinook are just
12 barely hanging on in the watersheds. Steelhead are doing
13 a little bit better, but just by a notch.

14 Also, similarly Salmon Creek, unlike its name,
15 you really can -- you're hard pressed to go there and find
16 Salmon these days. The water is extremely turbid and the
17 problems in both of these watersheds are growing by the
18 day.

19 Secondly, I'd like to address Humboldt Bay. And
20 I'd like to mention that the Center wholeheartedly
21 supports and commends the Board for the recommendations to
22 add several water bodies for exotic species including
23 portions of the San Joaquin, Bodega Bay and the Delta
24 waterways.

25 We would also like to encourage the Board to

1 include Humboldt Bay on the list of impaired waterbodies
2 for exotic species. Humboldt Bay is the second largest
3 estuary in California and is considered to be one of the
4 most biologically diverse on the entire west coast. Its
5 wetlands and inner-tidal mudflats and marshes provide
6 essential habitat for an impressive number of native
7 species, including 141 invertebrate species, 110 fish
8 species and 251 bird species.

9 But unfortunately it's also now home to a growing
10 and increasing number of exotic species. There was a
11 comprehensive survey undertaken earlier in, I believe,
12 2000 to 2002 that documented 95 exotic species in Humboldt
13 Bay. Of these 65 are confirmed to be invasive and
14 currently occupying the bay. There are 30 additional ones
15 that are probably introduced and/or cryptogenic.

16 These problems like the ones in Bear River and
17 Salmon Creek are threatening to only grow worse. So we
18 strongly encourage the Board to act on this and prevent
19 the kind of problems that we're seeing in San Francisco
20 Bay. I think we're well on our way to seeing that in
21 Humboldt Bay and we certainly don't want to get there.

22 Now, Humboldt Bay, unfortunately is home to
23 species like the Green Crab, which I'm sure you know has
24 just wreaked absolute havoc. So we'd like to get a handle
25 on the situation before it grows any worse, and certainly

1 encourage the Board to take that action.

2 So, like I said, we will be submitting our
3 comments in writing and submitting supporting
4 documentation for our things.

5 Thank you.

6 CHAIRPERSON DODUC: Thank you Ms. Elkins.

7 I have cards, again, from Ms. Sheehan and Mr.
8 Peter Kozelka of the U.S. EPA on all the regions. Is it
9 all right if I just wait until the end to get to the 2 of
10 you?

11 MS. SHEEHAN: Either way is fine.

12 CHAIRPERSON DODUC: All right. Let's do that. I
13 think that wraps up all the cards for Region 1. Mr.
14 Gwynne, as the regional water board representative do you
15 have anything you'd like to add at this point?

16 You don't have to I just thought I'd offer you
17 the opportunity.

18 MR. GWYNNE: There was the question on the report
19 that was cited, Wickham Rawson Report, and whether it was
20 in the record. It has been submitted again, but when I
21 was told that the way I could review the records that this
22 report was based on, the only way I could do that was to
23 come down here and make copies. And I understand that's
24 the same approach that all other members of the public
25 have been given, and I would strongly encourage you to

1 follow up on the request to have this information scanned
2 and posted for a more conservative approach to the traffic
3 that we face coming over here.

4 And I would point out that in the staff record
5 that I was presented to copy the Wickham report is there.
6 It is very conclusive, very detailed and very lengthy, but
7 it was not cited in the recommendations clearly as a
8 source of evidence of impairment.

9 CHAIRPERSON DODUC: Thank you. Mr. Johns, as the
10 only person here today who supported the delisting of
11 Laguna de Santa Rosa for nutrients and phosphorus, I'm
12 curious if you have anything to add upon hearing all the
13 comments otherwise.

14 MR. JOHNS: Well, I very much appreciate the
15 opportunity to come up and try to respond a little bit.
16 It might save me a trip to Pasadena.

17 The City does not dispute that there's a nutrient
18 problem in the Laguna de Santa Rosa. What we've disputed
19 or what we argue is that it's not clear based on the
20 information that it's a nitrogen or phosphorus problem.
21 And therefore, unless we know exactly what that limiting
22 agent or pollutant is, it doesn't make sense to make this
23 listing at this time, and that's effectively what your
24 staff has concluded twice now, 2 separate times, the last
25 listing cycle and now again.

1 The only reason that EPA on its review over
2 turned this listing -- and I suspect Mr. Kozelka might
3 have some more information on this when he speaks on the
4 global listings for the northern California reaches --
5 they cited a number of reasons in a letter to your
6 executive director as to why they disagreed with the staff
7 and your board's decision a couple of years ago citing a
8 San Diego Regional Board Basin Plan decision, as well as
9 referencing the Malibu Creek watershed TMDL for nitrogen
10 as well.

11 And the fact is that neither of those references
12 are applicable to the Laguna de Santa Rosa. They're
13 different waters. They're different conditions. They're
14 site specific. That's the whole purpose of TMDLs that is
15 to come up with water-specific plans to address specific
16 issues as we know them.

17 It's not, I don't think, completely fair to say
18 that it's all you have to do is look at the Laguna de
19 Santa Rosa and see that there is a nitrogen and phosphorus
20 problem. We know that there are loadings of these
21 constituents, but we don't know that either of them are
22 specifically causing the problems that are being cited.

23 One thing that I think is important to note is
24 that in EPA's own Malibu Creek TMDL a couple of years ago,
25 2003 -- they were the authors of that TMDL by the way --

1 they said that the predictive power in explaining the
2 patterns of algal abundance or biomass within Malibu
3 Creek watershed simply cannot -- excuse me, as there are
4 uncertainty as to what factors control algal abundance in
5 the Malibu Creek watershed, uncertainty also exists here
6 to figure out what's controlling or causing *Ludwigia* in
7 the Laguna.

8 The City supports more studies of the *Ludwigia*
9 problem there. And I think Mr. Levine stated to you that
10 there's already a nitrogen TMDL. And to my knowledge,
11 that is not true. In fact, there is a nutrient TMDL.

12 The City has proposed actual supporting
13 financially further studies to find out what the actual
14 limiting agent is. And I believe that the City would
15 stand by those past offers of financial support to do
16 that, combining with what I heard earlier today from the
17 folks from the Northern California River Watch of \$250,000
18 contribution to the regional board to identify this
19 problem, I think that we can before the next listing cycle
20 presumably find out exactly what the limiting agent is and
21 come up with appropriate plan, whether it's to list if it
22 it's determined that it's nitrogen or phosphorus or not to
23 because it's something else.

24 What is, I think, often lost in these
25 discussions, it's easy to say we should go ahead and list,

1 and then during the TMDL figure out what the limiting
2 constituent or pollutant is, but there are real world
3 implications to folks that have permits during that time.
4 They impact the actual permit limits that they're given.
5 And so if, for example, the City were to be given an NPDES
6 permit limit associated with phosphorus because of this
7 listing and then begins to take steps to either construct
8 new treatment facilities or do something to address that,
9 only to find out down the road, say 2, 3 years, whatever
10 it might be, that, in fact, it wasn't phosphorus, it was
11 something else, it's hard to explain to the citizens and
12 the rate payers of the region, why they're forced to pay
13 for something that in fact wasn't necessary.

14 And all we are asking by supporting the staff's
15 recommendation is to let the process go through, figure
16 out exactly what the limiting constituents is and then if
17 it's appropriate to list that in the next cycle we'll do
18 so. Or I should say I'm sure the staff will recommend to
19 the State Water Board that they do so.

20 So that would be my response.

21 CHAIRPERSON DODUC: Thank you Mr. Johns.

22 MR. JOHNS: Thank you very much.

23 CHAIRPERSON DODUC: Actually, with that, I am
24 going to ask Mr. Kozelka from EPA if he has any comments
25 on this particular issue.

1 MR. KOZELKA: Madam Chair. Talk about jumping in
2 the middle of things here.

3 CHAIRPERSON DODUC: I like to keep things
4 exciting.

5 MR. KOZELKA: Yes, I understand.

6 CHAIRPERSON DODUC: Please identify yourself for
7 the audience and the court reporter.

8 MR. KOZELKA: Sorry. Peter Kozelka, EPA
9 representative from the water division Region 9. We do
10 have concerns about the lack of interpretation of the
11 narrative biostimulatory water quality objectives. We
12 recognize it's difficult to interpret the narrative
13 standards, but it is being done in other states and it is
14 being done by other regions.

15 And we believe that although it is difficult to
16 find the precisely correct nutrient thresholds, it is
17 possible to ID waters where nutrient levels are so far
18 above a reasonable range of nutrients that it supports
19 listings.

20 So, in general, we disagree with the current
21 draft decision, which says do not list for nitrogen and
22 phosphorus. In our letter, we would recommend that the
23 State take on and examine specific nutrient values that
24 are being proposed or currently exist. Mr. Johns cited
25 San Diego because they actually have numeric criteria, as

1 in hard numbers.

2 There are some draft nutrient criteria for
3 regions for this State that are being developed. Those
4 could be used. There are some EPA criteria. There's also
5 the possibility of using other existing TMDL targets that
6 have been used for nitrogen and phosphorus. And so those
7 range of options should be used. And yes we recognize
8 that each waterbody is unique and that nutrients are
9 particularly difficult, but at the same time you have to
10 apply narrative as well as numeric in order to make
11 assessment decisions.

12 Anything else?

13 CHAIRPERSON DODUC: Thank you.

14 All right. With that we will move on to the San
15 Francisco Bay Regional Water Board area. And I have just
16 one comment card from Ms. Sejal Choksi.

17 MS. CHOKSI: Chairman Doduc, I actually wanted to
18 see if Jim Curland could go first. He is going to be
19 speaking on Region 3, but he has to leave.

20 CHAIRPERSON DODUC: With request, we'll move to
21 Region 3. Mr. Jim Curland.

22 MR. CURLAND: Thank you, Madam Chair. My name is
23 Jim Curland, and I'm the marine program associate with
24 Defenders of Wildlife, a national conservation group with
25 offices in 12 states including our headquarters office in

1 Washington D.C. and 2 offices in California, one here in
2 Sacramento, and then my marine office in the Monterey Bay
3 area.

4 And the comments that I'm going to be presenting
5 today are more overarching. And I defer and we fully
6 support the comments that Linda Sheehan will be giving on
7 more broader issues regarding the 303(d) listings And
8 delistings.

9 But I just wanted to state a few points regarding
10 the central coast area. I don't have any specific
11 comments on specific waterbodies. But at previous State
12 Board hearings and regional board hearings we've made the
13 comments about the SWAMP program, that it's clearly
14 underfunded, and we believe it leads to a severe lack of
15 monitoring data that is preventing clearly impaired waters
16 from being listed.

17 Where our focus comes into play is whether regard
18 to the Sea Otter and the Sea Otter is a marine sentinel
19 species for marine ecosystem health. We recently
20 completed our annual Sea Otter research meetings that are
21 hosted or co-hosted by Department of Fish and Game's
22 Marine Wildlife Veterinary Care and Research Center, USGS,
23 U.S. Fish and Wildlife Service and the Monterey Bay
24 Aquarium.

25 And as these meetings happen every year and other

1 meetings, more evidence comes in to play about the
2 land/sea connection with regard to a high rate of Sea
3 Otter disease. And, in fact, I don't know if many folks
4 know this, but Sea Otters more than any wildlife species
5 have the highest rate of disease, and many of these
6 diseases are from land-based origins.

7 What we're seeing is biological pathogens. We're
8 seeing a higher rate of domoic acid, which some believe
9 might have ties to nutrient loading. And that also the
10 feeling that there's a tie to human health, because what
11 Sea Otters eat, obviously, is a lot of what the seafood
12 consuming public eats. And if Sea Otters are picking up
13 these diseases from the variety of prey that they eat, we
14 eat the same thing. So there's a human health issue as
15 well.

16 One of the things that we might recommend, you
17 know, and I know this process is winding down in
18 mid-January, but that the Water Board invites Dr. Dave
19 Jessop who's with the Marine Wildlife Veterinary Care and
20 Research Center to do a presentation about the land/sea
21 connection and how we're seeing more and more contaminants
22 coming into the near-shore waters from various water
23 bodies.

24 And I guess we'd like to finish off with just a
25 few, again, overarching points that we believe that the

1 lack of standards for listings, the State has no standards
2 for nitrates to protect aquatic life. We believe that the
3 interpretation of the narrative standards where there are
4 only narrative standards, there are a number of instances
5 where the State uses evaluation guidelines that result in
6 the waters not being listed for a particular pollutant.
7 And we believe again, tying back to the Sea Otter, that
8 these guidelines must err on the side of caution. We're
9 just having too many Sea Otters die of disease. And that
10 new listings are being passed on due to the wrong
11 standards being used, for example, for nitrates.

12 So I guess the final comment I'd like to make is
13 that, you know, we've had various legislative hearings.
14 There was even a hearing before Congress on this whole
15 issue of marine species as sentinels for ecosystem health,
16 and we're just seeing more and more from with the Sea
17 Otters dying of disease is telling us is that there's
18 contaminants getting into the ocean through various
19 waterbodies that are getting there and resulting in this
20 high disease, and that we really need to crack down on
21 listing various waterbodies that may be aren't being
22 listed or the standards aren't being used adequately.

23 So thank you very much.

24 CHAIRPERSON DODUC: Thank you, Mr. Curland.

25 Now, we're back to Ms. Choksi. And that is the

1 remaining card that I have for all the other regions
2 except Region 5. I have 10 cards for Region 5. So what
3 we'll do is after you speak, we'll take a short break for
4 the court reporter, and then return to listen to Region 5.

5 MS. CHOKSI: Good morning, Chairman Doduc. Sejal
6 Choksi San Francisco Baykeeper. Thank you for allowing
7 Jim to go first and thank you for this opportunity to
8 comment.

9 I'm still reviewing the San Francisco Bay
10 documents. There's a lot of stuff, a lot of draft
11 documents. And I plan to have more complete comments
12 before the 17th. But in briefly glancing at everything, I
13 just wanted to raise 4 points on Region 2.

14 First, there's some waters that are listed on the
15 do-no-list category, and there are water quality
16 exceedances, and the staff admits that there are. But
17 they say that they're not going to list them because
18 there's another program that's already addressing that
19 pollutant.

20 An example of this is in Region 2, the failure to
21 list Payton Slough for Cadmium, Copper, Chlordane, Silver
22 and Zinc. And this violates the listing guidance, because
23 impaired waterways should be on the list until they're
24 cleaned up. So we request that staff double check these
25 waterways and keep them on the list until they are

1 addressed.

2 Second, in addition to this one mistake that we
3 found, there are at least 3 instances that I've seen so
4 far where existing and available data was not gathered or
5 evaluated, and that violates EPA regulations 40 CFR 130.7.
6 One example of this includes a failure to list San
7 Francisco Bay, San Pablo Bay, and Suisun Bay for PBDEs, a
8 toxic flame retardant.

9 Staff rejected listing these waters for PBDEs by
10 saying that there were only 2 studies in the
11 administrative record, and that these studies were
12 anecdotal reports and not specific. But there were
13 referenced quite a few more studies and these include 3
14 studies by She done in 2002, Holden in 2003 and North in
15 2004. And all of these studies identified PBDEs in bay
16 harbor seals, fish and local wastewater effluent. So
17 these studies were available and we believe they should be
18 taken into account.

19 State Board staff also rejected listing for PBDEs
20 by saying that since fish are mobile, the linkage analysis
21 was weak and it would be stronger if tissue was looked at
22 from filter feeding organisms. While there was actually a
23 2004 study and presumably the data was collected before
24 2004 and then the study was compiled in 2004, and that
25 showed that clams, which are filter-feeding organisms, had

1 high levels of PBDEs and that, in fact, the 2002 levels
2 were higher than 2001 levels. So there was data since at
3 least 2001 on clams.

4 So this study, the 2004 SFBI study concluded by
5 implying that there's not actually a lack of data
6 regarding the impairment. There is a lack of data
7 regarding the sources and pathways of PBDEs. And that
8 strikes me as something that a TMDL needs to address.

9 So Baykeeper believes that the weight of the
10 evidence supports listing for PBDEs in these waterbodies.
11 And we don't think that we should have to wait until 2008
12 to complete -- to have a TMDL, because we could be then
13 looking at a lot of delay for a pollutant that's present
14 right now in our waters.

15 The other 2 instances where we don't believe the
16 science was properly or adequately collected was in Bay
17 Area urban creeks and trash. The San Francisco Bay
18 Regional Board undertook a rapid trash assessment from
19 2003 to 2005. And in 26 sites they did 85 surveys. And
20 the study concluded that trash is alarmingly high in Bay
21 Area creeks even during dry weather conditions.

22 So this data was available and we believe it
23 warrants a listing of the creeks if not for the Bay,
24 because presumably all the trash is then going into the
25 Bay, but I don't think that there's enough data on that

1 point yet.

2 And finally, Baykeeper would also appreciate it
3 if staff could take a look at some of the other evidence
4 on pesticides that seems to have been available at the
5 time, because researchers recently at UC Berkeley found
6 widespread toxicity in urban creeks. And this was
7 pyrethroid pesticide toxicity in Kirker Creek specifically
8 in a Contra Costa County.

9 And Baykeeper believes these findings were timely
10 and may warrant a listing of some of the Bay Area creeks
11 for pyrethroids. So it's clear that staff put a lot of
12 time and effort into this proposal and we thank them for
13 doing that, and I look forward to working with your staff
14 to fix these few problems that I've noticed so far and
15 hopefully there aren't too many more. Thank you.

16 CHAIRPERSON DODUC: Thank you.

17 With that, we'll take a 15-minute break and
18 resume at 12:10, let's just make it.

19 (Thereupon a recess was taken.)

20 CHAIRPERSON DODUC: We are ready to resume.

21 And at this time, before we get to Region 5, we
22 have 2 speakers who would just like to provide general
23 statements, starting with Ms. Linda Sheehan.

24 MS. SHEEHAN: Thank you, Madam Chair and staff.
25 My name is Linda Sheehan. I'm the executive director of

1 the California Coast Keeper Alliance. We represent
2 individual water keeper groups from the Klamath River down
3 to San Diego on statewide issues of importance such as
4 impaired waters listings.

5 This is, I would remind everybody, and the people
6 know this, but it is the first application of the State's
7 new listing guidance, so the discussions we're having here
8 today are very important, will have precedential value,
9 and I think people, including the staff, are taking the
10 guidance so seriously and doing such a lot of work in
11 trying to prepare all the fact sheets and be thorough.

12 I would also like to support the listing of
13 various waterbodies for invasive species. I think that's
14 extremely important and it will help us get a handle on
15 that issue.

16 Add I also welcome the inclusion of waterbodies
17 that had formally been taken off as TMDLs completed. This
18 TMDLs completed list that was separate from the impaired
19 waters list, taking that and putting it within the
20 impaired waters list. That is extremely important.

21 As Sejal Choksi mentioned earlier, some of the
22 waters that are supposed to be -- have put back on the
23 list, may be didn't get put back on, so there might have
24 been a couple of errors in that regard. And we'll be
25 checking it over and you know hopefully would make sure

1 that everything is all set, but the staff report was
2 pretty clear that they're going to be on the impaired
3 waters list and we do support that.

4 I wanted to raise just a couple of concerns that
5 are specific with respect to legal issues with the
6 listing, and then a couple of broader issues that are
7 overarching and will be part of our comment letter as we
8 prepare it on January 17th.

9 A lot of these have been touched on. One would
10 be interpretation of narrative standards. And there seems
11 to have been a tendency to assume in the document that you
12 have to have a number, to the extent that if there's no
13 number, then a lot of waterbodies might be delisted. And,
14 in fact, as Mr. Kozelka said according to the law and the
15 regulations that 130.7 as well as Section 3.11 of the
16 listing guidance, which is the weight of evidence section,
17 you are and can and should and must list waters that are
18 impaired, whether or not they have a number associated
19 with them. The narrative standard interpretation can
20 sometimes be difficult, but it can and should be done.

21 And then second, another concern with
22 implementation of the regulations in 130.7 is the outreach
23 and collection of readily available data, and that was
24 something that Mr. Choksi alluded to in her testimony,
25 just making sure that waters are listed based on all

1 readily available data. And that's another issue that
2 we're going to be looking more into and making sure that
3 we've got all the waterbodies that should be on the list
4 on the list.

5 Another issue that was touched on by Ms. Adelman
6 earlier is with respect to Section 6.2 of the listing
7 guidance, and that's with respect to regional water board
8 public hearings on the list. And I'm a little bit
9 confused as to why that didn't occur, because the guidance
10 document is pretty clear that in 2004 the State Water
11 Board was going to do the list. That's in Section 6.3.
12 And then after 2004 Section 6.2 would kick in and then
13 individual regional water boards would review the list,
14 have local hearings, so that people wouldn't have to truck
15 in from all over the State, staff would be able to -- and
16 would be required to issue written comments in response to
17 the comments that were raised at the hearings.

18 And the regions would write resolutions that they
19 would transmit with their list up to the State Water
20 Board, which would have been extremely helpful to, you
21 know, us scrambling trying to read through pages of
22 documents trying to understand where the regional water
23 board staff come out, where the Board Members come out,
24 where we come out. And so I'm a little uncertain as to
25 why apparently that didn't happen. And, as you can see

1 today, at least one regional water board is objecting to
2 the list. And that would have been helpful to have that
3 in a resolution and a document that would summarize by
4 region that information and allow local people to be able
5 to attend local hearings.

6 So perhaps that could be addressed by having, you
7 know -- giving regions the opportunity to let people speak
8 or to comment, provide additional comments. I'm sure they
9 will be doing that, but perhaps additional outreach could
10 be taken in order to make sure that Section 6.2 of the
11 listing guidance is addressed completely, because public
12 outreach, including to staff and the Water Board Members
13 is extremely important in making sure that we're doing as
14 good a job as we can on this first application of the
15 listing guidance.

16 I just wanted to raise just 2 or 3 other points
17 with respect to the list. And, again, we're going to be
18 addressing these in more detail later. They're mostly
19 overarching points.

20 One is the lack of standards that are preventing
21 some waterbodies that are clearly impaired from being
22 listed. And I can cite 1 or 2 examples of that. No
23 standards for nitrates for aquatic life. So apparently
24 the drinking water standard has been picked instead, which
25 is not stringent enough. And the lack of standards for

1 sediments, of course, is causing a problem. Some of the
2 information that I've received for local water keepers and
3 other local groups is the dioxin in Humboldt Bay, DDT in
4 the Dominguez Channel are clearly problems. Because of
5 the lack of sediments, we're having trouble actually
6 listing the waterbodies. And that may or may not be a
7 list problem, but again it's something to consider for a
8 Water Board perspective.

9 There's no clear standards for the size of an
10 assessment unit, the areas affected. The staff report
11 says that that piece was addressed, but there still seems
12 to be quite a bit of variance among the regions in terms
13 of how big of waterbody is affected by an impairment. And
14 that does certainly affect the reach and size of the
15 impaired waterbodies which would impact the list.

16 So some more consistence and information on that
17 would be helpful as we go forward.

18 And, again, we're still reviewing the data, so
19 we'll flushing this out more. Another problem is the lack
20 of formal -- lack of addressing existing beneficial uses
21 again the staff report does say that they tried to look at
22 existing beneficial uses within a waterbody, if in fact
23 there was not a formal beneficial use designated in a
24 basin plan to see if perhaps kids were swimming,
25 eventhough it didn't say swimming. And then addressing

1 impairment accordingly.

2 We're not sure that was done everywhere. We'd
3 support that. We're not sure it was done everywhere. One
4 person said that the Salinas Reclamation Canal in Region 3
5 as a possible, but again we're looking into that in more
6 depth for the 17th.

7 And then finally something that Mr. Curland
8 touched on is with respect to the lack of monitoring data.
9 You know clearly SWAMP has been underfunded, and the
10 funding has been reduced, and I'm sure I'll be up here on
11 Friday talking about that some more.

12 But there are some waterbodies that should pretty
13 clearly be listed, based on surrounding impairments and
14 surrounding historic uses. Salmon Creek was mentioned
15 earlier for sediments, and Humboldt Bay the historic mill
16 use in the area clearly points to dioxin as a problem and
17 possibly pentachlorophenol. And Dominguez channel for a
18 PCBs and DDTs as well. And I'm sure that that will come
19 up in the hearing in early January.

20 But again we're seeing, you know, because there
21 isn't monitoring data in that particular spot, eventhough
22 the waters are clearly impaired because everything around
23 it is impaired or there were clearly like 200 mills in the
24 area, lack of monitoring is preventing that from being
25 appropriately listed.

1 And that would be another push again for
2 additional SWAMP monies, but also a closer look as to
3 whether these particular areas are a problem. And, in
4 fact, there was a great article in the San Diego Union
5 Tribune right after the list came out where John Robertus
6 down in Region 9 said if we had more money to monitor I'm
7 sure the list would be even longer. And that doesn't
8 actually make me feel better. I would prefer the list
9 always get smaller because the waters are clean.

10 And that kind of brings me to sort of the summary
11 is to just keep in mind that it's very easy to get caught
12 up in the salinity and DDT and 130.7 and all of the little
13 nit-picky things that go into this list. But the thing to
14 remember is we've got 287 more waterbodies listed and we
15 keep refining the list and looking at everything more
16 closely and still we add more waterbodies.

17 And so that makes you want to stop and take stock
18 and say well, what are we as a Water Board not doing
19 appropriately? Should we be doing more enforcement?
20 Should we be doing better permits? Should we not be doing
21 waivers? Should we be doing WDRs instead on polluted
22 run-off. These are all the things we need to think about
23 as we finalize the list and not get -- the list is
24 extremely important. We need to do it right to help us
25 figure out also, not only how to cleanup those waters, but

1 prevent other waters from being polluted in the future,
2 and that's really the goal, clean water, that we all
3 should be looking at.

4 And we'll be outlining these in excruciating
5 detail on the 17th I'm sure.

6 CHAIRPERSON DODUC: Thank you. A clarifying
7 question. You said that one regional board is objecting
8 to the list, the entire list?

9 MS. SHEEHAN: No, no, no. I was just referring
10 to the staffer from Region 1 today talking about Laguna de
11 Santa Rosa.

12 CHAIRPERSON DODUC: That one listing.

13 MS. SHEEHAN: Yes, as an example. And I have
14 also been talking with different environmental groups
15 around the state who have said that they've been talking
16 to staff as well, and there have been questions about
17 different pieces of the list. And, again, we'll try to
18 flesh those out. But if the public hearings had been
19 held, then, you know, that might have been more
20 consolidated for your review.

21 CHAIRPERSON DODUC: Thank you.

22 Mr. Kozelka.

23 MR. KOZELKA: Thank you, Madam Chair.

24 Peter Kozelka from EPA again.

25 I want to first recognize an enormous amount of

1 effort that's been put in by Craig Wilson and his staff to
2 produce this staff list. It's worth clarifying that EPA
3 actually assisted in the data compilation and the
4 preliminary analysis, but to stress that all the listing
5 decisions and recommendations in the actual list were
6 based upon your staff's decisions alone.

7 It's pretty important for to us stand up here and
8 say that EPA supports vast majority of the listing
9 assessments. That is in greater than 95 percent, we
10 conclude the same decision that your staff has. And we
11 believe it's critical to complete this process quickly.

12 We support and actually suggested the idea of the
13 joint 2004 and 2006 list, but is important to not let this
14 slide past the spring of 2006. In the future, we would
15 suggest that EPA -- or excuse me that California develop
16 an integrated report, which combines those 305(b) and the
17 303(d) lists together, which is also outlaid in our 2004
18 and 2006 national guidance and to get back on a biennial
19 schedule per federal regulations.

20 So we will be submitting written comments at the
21 end of the comment period in the middle of January. Today
22 I have a few things to highlight with some focus on
23 northern California waters. Actually, only 2 areas of
24 concern, 2 areas of support and 2 comments.

25 And you're already heard one of the concerns,

1 that was related to nutrients and decision for the Laguna
2 de Santa Rosa and I won't repeat that.

3 The concern about conventional pollutants. The
4 listing policy provides generally a useful framework for
5 setting a more consistent objective basis for decisions.
6 In the past, EPA has expressed significant concerns about
7 several aspects of the final policy, most notably that
8 certain aspects may not be consistent with applicable
9 water quality standards, which what the assessments are
10 supposed to be based on.

11 For conventional pollutants, the policy utilizes
12 a binomial approach to evaluate waterbody conditions for
13 parameters such as DO, pH, TSS. The DO standard is
14 actually a numeric standard and most regional board basin
15 plans have descriptions that include some allowable
16 exceedances based upon a 90th percentile or an 85th
17 percentile depending upon each specific basin plan. And
18 this corresponds to a 10 or 15 percent allowable
19 exceedance rate respectively.

20 As far as I can tell the policy's criteria says
21 that you have to have greater than 25 percent exceedances
22 in order to call it impaired. We don't see how 25 is
23 warranted and we wouldn't support that. We would support
24 the idea of applying 10 percent, because that's what's
25 consistent with the standards.

1 An example of this is Chumash Creek in Region
2 Board 3, which is impaired by greater than 10 percent for
3 DO, but it is not on the draft list.

4 Whereas the policy is designed to make more
5 consistent application across the state, we would hope it
6 would be also consistent with existing standards.

7 Two things in support. We support the invasives
8 or exotic species listings. This signals State
9 recognition of this real contributing cause of beneficial
10 use impairment in some important State waters. You may
11 hear that some commenters will suggest that listing for
12 invasives will set precedents and potentially lead to
13 impaired listings anytime invasives are observed.

14 However, we believe that assessments for
15 invasives and exotics can be performed and listed in ways
16 that do not represent sweeping policy statements and also
17 can be supported under the Clean Water Act or
18 Porter-Cologne. The key here is evidence of impact on
19 beneficial uses and to warrant an ID species of concern.

20 We support central valley listings for
21 temperature and there may need to be a few more. This is
22 another situation where existing water quality objectives
23 are awkwardly stated and difficult to interpret, but it is
24 being done in other states and it is being done in Region
25 1. We commend the State Board staff for evaluating

1 substantial data indicating several essential valley
2 waters are at very elevated temperature levels. EPA
3 provided some technical guidance to help make those more
4 transparent and consistent with scientific studies for
5 fish survival.

6 However, we have one waterbody which is not in
7 the central valley but in the north coast that believes
8 continued listing of the Lower Lost River for temperature
9 is unwarranted. We did not intend this particular
10 waterbody to be included in our regional decision in 1992
11 to list the Klamath River and the Lost River. So that's
12 specifically the Lower Lost River not for temperature.

13 Two general comments. The policy provides in the
14 final analysis for the application of a weight-of-evidence
15 approach through which the State can decide to list waters
16 which do not meet an individual listing test elsewhere in
17 the policy or vice versa could delist.

18 We are concerned that this weight-of-evidence
19 approach has not been applied in many cases. And it may
20 have led to listing recommendations that are at odds with
21 water quality standards in the compiled data and
22 information.

23 Another comment. New Data. We fully understand
24 the concern about being overwhelmed by new data
25 submissions, but we believe the State is compelled to

1 consider this on a case-by-case basis. That is, we hope
2 State Board doesn't categorically rule out evaluating
3 newer data submittals. We have no preconceived ideas of
4 specific data sets that must be considered, rather EPA is
5 willing to work with your staff to develop criteria to
6 sport through data submittals that may come in during the
7 public comment period with 1 goals in mind. One is to
8 reduce staff workloads, and 2 is to get a finalized list
9 by April 1st, 2006 to be consistent with federal
10 regulations.

11 In summary, there's much support for the draft
12 list by and large this is a much better draft list
13 compared to ones in the past. One measure of this is that
14 we have identified only a few dozen waterbody common areas
15 where we currently disagree. I don't have a lot of
16 history, but I can say a few dozen is pretty small
17 compared to what it has been in the past.

18 We will carefully evaluate the final submittal,
19 and if necessary add waterbody pollutant combos prior to
20 issuing a final approval. This will also include a public
21 comment period.

22 We appreciate the opportunity to comment today
23 and we also comment at the Pasadena hearing for southern
24 California specific issues, but those are not many
25 concerns.

1 Thank you.

2 CHAIRPERSON DODUC: Thank you. We look forward
3 to receiving your comments.

4 Any questions?

5 All right. With that, we'll now turn to comments
6 with respect to the Central Valley region. We have a
7 representative from the regional Board, Mr. Joe Karkoski.

8 (Thereupon an overhead presentation was
9 Presented as follows.)

10 CHAIRPERSON DODUC: Since I see people leaving, I
11 want to take a moment and thank you for coming here from
12 the north coast area. We appreciate it.

13 MR. KARKOSKI: Good afternoon. My name is Joe
14 Karkoski. And I'm a Senior Water Resources Control
15 Engineer from the Central Valley Regional Board.

16 We will be submitting detailed comments to the
17 State Board, but I would like to highlight a number of
18 significant policy issues that staff have identified.

19 First, we have appreciated the earlier
20 opportunities provided by State Board staff for regional
21 board review of the fact sheets. Many positive changes
22 have been made in response to our previous comments.
23 However, there are a few critical issues that we still
24 believe need to be addressed.

25 --o0o--

1 MR. KARKOSKI: So I'm providing the comments that
2 Peter said you may hear later.

3 I'll focus my comments on the proposed exotic
4 species and temperature listings and touch on a few other
5 listing issues.

6 --o0o--

7 MR. KARKOSKI: There are a number of legal,
8 technical and policy problems with the exotic species
9 listings for the Delta, San Joaquin River and Cosumnes
10 River. Before I touch on those problems, I want to lay
11 the foundation for our comments.

12 First, in reviewing the fact sheets and the
13 references upon which the listings are based, there are
14 consistent references to non-native species. Since there
15 is no other definition of exotic species, we assume that
16 all non-native species are exotic. Non-native species
17 include species that this Board and the U.S. EPA are
18 trying to protect, such as stripe bass, species that
19 routinely are consumed by sport fisherman and subsistence
20 fisherman such as catfish, and species used for biological
21 control of mosquito, mosquitofish.

22 --o0o--

23 MR. KARKOSKI: In our discussions with staff, it
24 appears that the listings are being proposed based on the
25 suggestions of U.S. EPA and a recent federal court ruling.

1 That ruling concluded that NPDES permits were required for
2 the discharge of ballast water. This ruling was partially
3 based on a determination that ballast water often contains
4 invasive species and those invasive species are
5 pollutants. We believe that this ruling is
6 inappropriately being extended to established non-native
7 species where there is no discharge of waste.

8 --o0o--

9 MR. KARKOSKI: We have also reviewed the
10 references that form the basis for the listing
11 recommendations. For the San Joaquin River, the reference
12 clearly indicates changes in flow and hydro modification
13 are the cause of the decline in native species.

14 The altered flow regime has favored non-native
15 fish species. But the non-native fish have not caused the
16 natives to decline. The reference used for the Cosumnes
17 River provides the only compelling evidence that a
18 non-native introduced species, the redeye bass, has caused
19 the decline of native species. The particular species
20 rather than a general category can be identified.

21 Lastly, the Delta listing is based on a
22 biological opinion by Fish and Wildlife Service that
23 identifies a number of potential causes for the Delta
24 smelt or pelagic fish decline. Although that opinion
25 mentions both specific invasive species and toxic

1 pollutants as potential contributors, the primary focus of
2 the opinion is on flow changes including exports.

3 --o0o--

4 MR. KARKOSKI: Prior to making a decision to list
5 exotic species within the context of the new listing
6 policy, we would like the Board to consider the following
7 policy questions. We believe these questions should be
8 considered since there are potentially significant
9 unintended consequences to a decision to list exotic
10 species. If the State Board decides non-native species
11 are pollutants by placing them on the 303(d) list, are we
12 then obligated to protect pollutants from pollutants?

13 If non-native species are pollutants, are
14 regional and State Board programs that protect non-native
15 species undermined? What regulatory authorities would we
16 be expected to use to control the propagation of
17 established non-native species.

18 A Delta listing of exotic species suggests that
19 the State Board has confirmed a cause or contributor to
20 the pelagic fish decline. Is such a listing getting ahead
21 of the multi-million dollar scientific investigations into
22 the cause of the decline?

23 --o0o--

24 MR. KARKOSKI: We recommend that exotic species
25 not be listed. The legal and technical foundation is

1 generally lacking. The policy implications and potential
2 unintended consequences of identifying non-native species
3 as pollutants has not been considered. If the State Board
4 does want to delve into the issue of the potential impact
5 of non-native species, we suggest a separate more
6 deliberative approach that will allow consideration of the
7 various legal, technical and policy issues.

8 Should the State Board decide to go forward with
9 listing exotic species, we highly recommend that the State
10 Board specify which species are causing non-attainment of
11 water quality standards. A general listing causes
12 confusion and could lead to unnecessary expenditure of
13 time identifying the species to focus on.

14 One other thing I'd like to mention is that in
15 our basin plan, and I don't believe in any controlling
16 State Board policies, there is mention of native versus
17 non-native species. So we actually do not have a water
18 quality standard or a beneficial use description that
19 gives preference for natives over non-natives. So that's
20 another issue with respect to the policy foundation for
21 making a listing decision.

22 --o0o--

23 MR. KARKOSKI: We are also concerned about the
24 precedent that the proposed temperature listings may set.
25 The approach taken in the fact sheets is to compare

1 temperature data to a single criteria. This may not be
2 appropriate since the temperature regime in the waterbody
3 may be consistent with natural conditions even if it does
4 not meet that criteria at all times.

5 The listing policy suggests a more robust review
6 of both temperature and fishery data than has been
7 conducted in the draft fact sheets. We have discussed
8 this issue for the north fork of the Feather River with
9 the Division of Water Rights staff. Water Rights staff
10 has a great deal of information that could be used to
11 support the temperature listing in the north fork, such as
12 the status of the fishery over time.

13 --o0o--

14 MR. KARKOSKI: We would recommend that the State
15 Board include a summary of all lines of evidence regarding
16 temperature impacts to be consistent with the listing
17 policy. We do not believe that using only one line of
18 evidence based on literature values is appropriate for
19 temperature listings.

20 Finally, we think temperature issues in the
21 central valley are complex and need further study in order
22 to come up with an appropriate framework for listing. We
23 will pursue TMDL contract funds to determine whether the
24 cold water fisheries are viable in streams with
25 temperatures above literature values, how temperatures in

1 central valley streams that are highly altered compared to
2 those that are minimally altered, and we would like to
3 identify whether there are controllable factors that
4 contribute to any increase in temperature.

5 --o0o--

6 MR. KARKOSKI: To finish up, I want to touch on a
7 couple other issues. Since it has been awhile since the
8 compilation of data took place, we will provide more
9 recent information for a few key fact sheets that
10 recommend either a listing or delisting.

11 There are a couple of cases in which a general
12 category is used, for example, sediment toxicity. But the
13 data identifies the specific toxicants. In those cases,
14 we believe the specific pollutants should be identified.

15 Lastly, we believe additive toxicity needs to be
16 considered. In a couple of cases, diazinon and
17 chlorpyrifos, which exhibit additive toxicity, are
18 considered separately. We believe their additive effect
19 must be evaluated.

20 And I also wanted to touch on the concern raised
21 by a couple of commenters regarding regional board
22 participation in terms of having a hearing process. I'm
23 sure you'll hear this from your staff, but to go through a
24 regional board hearing process, at this point, would
25 probably delay things another 9 months to a year. I think

1 we would feel obligated to do an independent review of the
2 data ourselves, if we are going to present recommendations
3 to our board. And so we may, you know, start anew with
4 looking at available data and information in making our
5 own independent recommendations versus just commenting on
6 what State Board staff has come up with.

7 So that's all the comments I have. I'd be happy
8 to answer any questions.

9 CHAIRPERSON DODUC: Thank you, Mr. Karkoski.

10 MR. KARKOSKI: Thank you.

11 CHAIRPERSON DODUC: Mr. Tim O'Laughlin.

12 MR. O'LAUGHLIN: I have a hand and of the actual
13 PowerPoints.

14 (Thereupon an overhead presentation was
15 Presented as follows.)

16 MR. O'LAUGHLIN: Thank you. Tim O'Laughlin
17 representing the San Joaquin River Group Authority. I
18 think we've been together for the last three months
19 talking about this once every 2 weeks.

20 CHAIRPERSON DODUC: Actually, you haven't
21 appeared in front of me for 2 weeks. I've been through
22 withdrawal.

23 MR. O'LAUGHLIN: Oh, I'm sure.

24 (Laughter.)

25 MR. O'LAUGHLIN: Well, it's good to get back

1 together again and talk about one of my favorite subjects.

2 Briefly, the San Joaquin River Group Authority
3 filed a petition to delist the Lower San Joaquin River for
4 salinity and boron. I'll wait --

5 CHAIRPERSON DODUC: I'm grabbing the last handout
6 here.

7 MR. O'LAUGHLIN: -- for salinity and boron in
8 September of this year. I talked to Mr. Wilson of your
9 staff. What we have agreed to do, and we sent in a letter
10 to the State Water Resources Control Board, was that
11 rather than to proceed with our petition to delist at this
12 time, that we would proceed forward under your revised
13 303(d) listing at this time and make our comments and
14 suggestions in this hearing process.

15 --o0o--

16 MR. O'LAUGHLIN: The San Joaquin River pursuant
17 to the 303(d) list for impaired bodies was added on
18 January 29th, 1996. In our previous discussions, and
19 you'll see this in our submittal that we made previously
20 to you, the salinity and boron was not on the original
21 staff lists put forth by the Central Valley Regional Water
22 Quality Control Board staff and recommended to the
23 regional board, nor was it on the add-on sheets or the
24 revised sheets that were presented to the regional board.

25 In fact, it appears that what happens is that the

1 your staff report and your fact sheet. Water Code section
2 12230 the technical report on the regulation of
3 agricultural drainage to the San Joaquin River that was
4 prepared pursuant to Water Quality Order 85-1, and then
5 finally the 1995 Bay/Delta Water Quality Control Plan.

6 Starting with the top, and you can read Section
7 12230 if you'd like for yourself, but under 12230 it's
8 very interesting. This is going back in time as to the
9 problems that were associated with Kesterson. And you
10 will find that in adopting 12230, that the Legislature
11 found that there was a serious problem of water quality
12 that existed in the San Joaquin River. They never defined
13 what the problem was. And the Legislature basically
14 directed this Board and the regional boards to go out,
15 find out what that problem was and address the issue.

16 At the time, the major concern was selenium. And
17 if you look at number 2, which is the technical report on
18 the regulation of agricultural drainage that was done,
19 that report addressed the selenium issue that arose from
20 Kesterson, which ultimately resulted in the Grasslands
21 Bypass NPDES issuance of a permit for controlling selenium
22 discharge from the west side.

23 The 1995 Bay/Delta Water Quality Control Plan did
24 have evidence in the record as to salinity and exceedances
25 of salinity in the Lower San Joaquin River and that was

1 modeling that was done pursuant to the old stand mod and
2 DWR's sim modeling. And I'll get to that in a little bit.

3 --o0o--

4 MR. O'LAUGHLIN: We've been through some of these
5 with you. I won't bore you with the details. They'll be
6 included in much detail in our original -- in our
7 submittal that we'll be making in January. But pursuant
8 to your rules and regulations, the original waterbody for
9 pollutants shall be removed if the original listing was
10 due to faulty analysis, faulty data or no data at all.

11 We originally pointed out to you in our submittal
12 that the data used by the Central Valley Regional Water
13 Quality Control Board looked at the time period from 1984
14 through 1994, which included 6 critically dry years,
15 consecutive critically dry years. That has never occurred
16 in the hydrologic record in the San Joaquin River either
17 before or since.

18 Also, when you look at the critically dry years,
19 there was a total of 19 from 1922 to 1994. And out of the
20 16, 6 occurred during the time period. Clearly, when you
21 get to the data, which I'll show you shortly, it's
22 spatially and statistically skews the data in favor of a
23 listing.

24 Not only that, the data that must be used to list
25 has to temporarily and geographically represent the

1 waterbody. And what we've presented in our documents to
2 you both last year -- I mean, not last year, last
3 February, last April, last May, September, October,
4 November and December, is that the data that currently is
5 on your fact sheet does not represent neither temporarily
6 or geographically the waterbody that's being discussed.

7 So there's lots -- a lot has changed since 1996
8 when the original listing was done. Those are not
9 captured within the State Water Resources Control Board
10 fact sheets.

11 The second one which is kind of an important one,
12 we think, is -- and I know people don't like hearing this
13 because -- but we've actually achieved the objective. The
14 Vernalis salinity objective and requirement that is set
15 forth in the 1995 water quality control plan and before
16 has been met since 1995 is continuing to be met and there
17 is no expectation in the future that it will not be met.

18 And if that is the case and the water quality
19 objective is being met, there is no reason for having a
20 303(d) listing. There is no currently trends in declining
21 water quality or impacts are no longer being observed.
22 This is an important one since the Grasslands Bypass
23 permit was granted under its NPDES permit and other
24 actions have taken place in the basin B2, FERC flow
25 requirements, VAMP requirements, San Joaquin River

1 agreement requirements, supplemental flows, ag discharge
2 requirements.

3 In fact, the trend is to a better water quality
4 in regards to salinity and boron and not a worse water
5 quality for salinity and boron.

6 And we don't have to deal -- there's some
7 confusing stuff about the last one, but I'll leave that
8 for a different slide at a different date.

9 --o0o--

10 MR. O'LAUGHLIN: We agree with the previous
11 speakers that I know this is going to be hard for the
12 State Board staff for the Board Members as well, but our
13 complaint is that the listing policy requires the
14 evaluation of all readily available data. And it seems to
15 us that that has not occurred in this situation.

16 In fact, one of the key points that we made is
17 that -- and we made this before the Central Valley
18 Regional Water Quality Control Board when they were
19 adopting the salinity and boron TMDL -- was that CalSim II
20 modeling, which is the newest modeling, which shows that
21 it will not occur -- it's an updated model. It's the
22 model currently being used by DWR and USBR for planning
23 not only in the San Joaquin River basin but in the Delta
24 as well. It shows that there will no longer be violations
25 of salt and boron at Vernalis. And if violations would

1 occur, they would only occur if the Bureau was strictly
2 adhering to the interim plan of operations.

3 We put into record that the Bureau does not
4 strictly adhere to the interim plan of operations. And
5 since they have a permit condition, we would expect them
6 to meet their permit condition. So we believe and we will
7 submit it to this Board and staff again the evidence that
8 we believe leads to the delisting of the Lower San Joaquin
9 River.

10 I'm going to skip the next slide, which is kind
11 of just a more exhaustive -- this is a comment by the
12 Central Valley Regional Water Quality Control Board.

13 --o0o--

14 --o0o--

15 MR. O'LAUGHLIN: But I think it's important that
16 even the regional board and the regional board staff
17 recognizes that there's been extensive changes in the last
18 10 years in the San Joaquin River in regards to water use,
19 drainage, flows, simulative capacity. And we believe
20 that's not represented -- we believe that this comment is
21 well taken and should be addressed more fully by staff as
22 they move forward.

23 --o0o--

24 MR. O'LAUGHLIN: Finally, no EC objectives. I
25 want to spend some time on this one. This is kind of an

1 interesting one.

2 Actually, the Central Valley Regional Water
3 Quality Control Board when they were conducting the
4 modeling for the TMDL that this Board recently adopted,
5 went back -- we went back and said okay, well, let's break
6 this out by year, and distribution about how the regional
7 board came up with what they came up with in regards to
8 the salinity violations at Vernalis.

9 This is based on modeling done under DWR Sim.
10 It's for the time period 1922 to 1994. And it's broken
11 down by year type, critical years, dry years, below
12 normal, above normal, wet, and then we did the totals down
13 at the bottom.

14 One of the first things I wanted to point out is
15 that during that time period, which is roughly 72 years,
16 16 years were critical. Now, remember when the original
17 listing was done, it was based on 6 years of consecutive
18 critically dry years occurring from that time period, '84
19 through '94. So you can see right away how the values get
20 skewed.

21 And then if you go over, you'll see that that's
22 192 months. There were actually 38 exceedances during
23 that time period. And you'll note, and it's not
24 coincidence, that in critically dry years we have 38
25 exceedances during the irrigation season and we also have

1 33 exceedances in the non-irrigation season, totalling 71
2 exceedances during the critical dry year periods, okay,
3 and that's out of a total of 129 or 130 exceedances.

4 So in critically dry years you make up more than
5 half of your exceedances are occurring in critically dry
6 years. Well, if you go and you originally set your 303(d)
7 based on 6 years of critically dry years occurring in a
8 10-year record, what would you expect?

9 You would expect that your data would be skewed.
10 And so what we did then was we went a step further and we
11 broke it down. And your listing policies roughly says a
12 25 percent exceedance. What we came up with is that in
13 the irrigation season total you would have percent
14 exceedances would be 16. And in the non-irrigation season
15 they would be 14. The computer does its voodoo. We
16 ruffed these out. There are about 15 percent total
17 exceedances and then a total of 129. That should be 130.
18 There's rounding errors involved plus or minus 1.

19 But what that points out is that since 1994 for
20 the last 11 years -- 1995 -- we have met the salinity
21 requirement at Vernalis. That's 120 -- call it 120 months
22 that the salinity requirement has been met. We didn't
23 add -- we were trying to be conservative. We did not add
24 those numbers to these numbers. But if we did, these
25 percentages would drop dramatically. And what this points

1 San Joaquin River, where are the impacts occurring, what
2 are the beneficial uses we're protecting.

3 One of the things I've always thought that is
4 kind of ironic about this whole listing is that the
5 Vernalis salinity standard has been set to protect
6 agricultural beneficial uses in the Delta, in the southern
7 Delta. That's why the salinity standard was set at
8 Vernalis.

9 Well, but the impaired body of water supposedly
10 is the 130 miles from Mendota Pool to Vernalis. Well,
11 wait, there's farming occurring along there, and there's
12 agriculture occurring along there, and yet we're not
13 saying that those people aren't impaired. The other thing
14 that I find ironic about this is if you look at these
15 critically dry years, and we went through this recently in
16 an administrative civil liability hearing from the
17 Superior Court.

18 One of the other interesting things about this is
19 that we're releasing high quality water out at New Melones
20 Reservoir in critically dry years to support a salinity
21 standard at Vernalis -- the salinity standard at Vernalis
22 to protect agricultural and beneficial uses in the
23 southern Delta.

24 Well, one of the ironic things is though is the
25 Board sends out under Term 91 or Term 93 orders to people

1 in the Delta to cease diversions for use of that water,
2 pursuant to their permits, because they can't take and use
3 stored water. And I won't go through the whole Term 91
4 Term '93.

5 So we're releasing high quality water from New
6 Melones in critical year periods and dry year periods.
7 The Board issues cease and desist orders. Well, wait, if
8 the purpose is to protect agriculture and beneficial uses,
9 we're sending a mixed message. Because at the same time
10 we're trying to make water quality better in the Delta,
11 then we're sending a message to the farmers in the Delta
12 and telling them that they can't use the water, because
13 it's stored water under Term 91 or Term 93.

14 I think we need to spend some time on this. I
15 think we need to go through it. I realize that the Board
16 has adopted a TMDL. We will be moving for a motion for
17 reconsideration of course of your decision to adopt that
18 TMDL. And we'd like to have that hearing in January, that
19 workshop to more fully discuss what are the impacts, what
20 are the issues that we can get to and how can we address
21 salinity control in the San Joaquin River.

22 Thank you very much.

23 CHAIRPERSON DODUC: Questions for Mr. O'Laughlin.

24 ENVIRONMENTAL SPECIALIST WILSON: Just a brief
25 questions regarding you submittal. When you talk about

1 fact sheets, you're talking about the '96 information that
2 was in --

3 MR. O'LAUGHLIN: 96/98.

4 ENVIRONMENTAL SPECIALIST WILSON: -- that was in
5 the State Board and regional board's files?

6 MR. O'LAUGHLIN: Yes.

7 ENVIRONMENTAL SPECIALIST WILSON: Because we
8 haven't addressed this issue in the 2006 activities. We
9 don't have any fact sheets on this and the date is not in
10 my record right now.

11 MR. O'LAUGHLIN: Yeah, I know. I made a. --

12 ENVIRONMENTAL SPECIALIST WILSON: I realize.

13 MR. O'LAUGHLIN: I made a Public Records Act
14 request and there is no data. So that's -- I mean --
15 that's why I feel strongly that we need to get the data
16 and spend a day and go through the data with everybody in
17 the room looking at the data sheets and what are the facts
18 to support the 303(d) listing.

19 ENVIRONMENTAL SPECIALIST WILSON: And you're
20 questioning just the listing at Vernalis or all the
21 listings? There's 4 listings for the San Joaquin River.

22 MR. O'LAUGHLIN: The Lower San Joaquin River --

23 ENVIRONMENTAL SPECIALIST WILSON: -- is the only
24 one you're interested in?

25 MR. O'LAUGHLIN: -- Salt and boron, that's the

1 only one. Very narrow, very focused. That's the only
2 one.

3 CHAIRPERSON DODUC: All right. Thank you.

4 Since Mr. O'Laughlin raised the question of where
5 is the impairment? What's the impact? Let's hear from
6 Mr. Herrick. I'm beginning to know you guys a little bit
7 too well.

8 MR. HERRICK: Thank you, Madam Chairman. John
9 Herrick for the South Delta Water Agency. We have been
10 here a lot and so I feel that I can be a little flippant
11 when I say things like this is just nuts. To say that the
12 San Joaquin River doesn't have a salinity impairment is to
13 deny reality and 40 years of data.

14 There is no doubt that when the CVP began
15 operation it caused drainage from the west side of the San
16 Joaquin valley to go into the San Joaquin River at very
17 high salinities. And those salinities continue to enter
18 the river sometimes at amounts at or exceeding 5,000 TDS.

19 Now, the standard we have is EC at Vernalis, but
20 translates approximately 450ish for TDS. So we've got 100
21 miles of waterway with water quality at 2, 3, 5, 10 times
22 the standard at Vernalis. The Bureau of Reclamation
23 releases water from New Melones and it comes down the
24 Stanislaus River and enters the channel just upstream of
25 Vernalis, and they meet the -- they try to meet the

1 Vernalis water quality standard in what a 400-yard stretch
2 of the river.

3 As it goes downstream, it degrades slowly.
4 Upstream it's degraded horribly because of the situation.
5 So we've got an extremely narrow compliance point and
6 that's the only point being met.

7 We've got 100 miles of degraded river. Now, the
8 fact that the regional board being directed by the State
9 Board for the past 20 years to set an upstream standard,
10 the fact that that hasn't occurred, that doesn't mean that
11 there's no impairment upstream.

12 To suggest that areas haven't gone out of
13 business for agriculture is an indication that there's no
14 impairment is nonsensical. All the data that's been
15 submitted over the years and the data before this Board,
16 water quality degradation has, whether slight or great,
17 decreases in crop production. If some guy is getting 4
18 percent less crop production than he would normally, he
19 doesn't keep track of that over the years, saying I would
20 have gotten another 10 pounds per acres or something. But
21 that's what this Board did over the past 30 years. It
22 said well, we're going to take that into consideration.
23 We will set limits, because we don't want further
24 degradation in crop production.

25 There's no question here that this is what's

1 happening. And there is no question that it's going to
2 continue to happen.

3 The Bureau of Reclamation operates New Melones to
4 meet Vernalis. It doesn't make any releases to meet the
5 downstream water quality standards. So the Bureau of
6 Reclamation's intent right now is to meet the water
7 quality in whatever it is that few hundred yard stretch of
8 river where the mixing occurs and then the water will
9 continue to degrade and will always be degraded upstream.
10 The Bureau has no plan for upstream.

11 There's a federal law, HR 2820, that passed last
12 year, that requires the Bureau not only to meet its
13 obligations on the river but to decrease its use of New
14 Melones water for those purposes. So to say that the
15 future is bright and we're going to meet Vernalis much
16 less the other standards is simply misleading the Board.
17 That's not the plan.

18 Now, the upstream actions, which are very
19 admirable to a great extent to address salinities are very
20 good. But the Grasslands Bypass project has reused water.
21 It's trying to hold the selenium in the area. The reuse
22 of the water is concentrating the salts.

23 So although they've decreased the amount of
24 discharges into the river that have salts, they're
25 concentrating the salts. Now, some of it's being shoved

1 down below the ground and it's going into groundwater,
2 which is on the gradient which goes towards the river and
3 the other stuff, their plan is to get federal funding or
4 some funding to have a desalination plant down there to
5 remove the salts. And then they're going to take the
6 water and sell it. They're going to use it somewhere
7 else. It's not going into the river.

8 So their cure for upstream salinity is based upon
9 somebody funding a \$100 million desalination plant. Well,
10 whether that will or will not occur, who knows.

11 I'd also like to mention that Mr. O'Laughlin --
12 offense for making this personal -- Mr. O'Laughlin
13 references the CalSim II forecast that the picture is
14 rosey. Well CalSim II is going through a peer review
15 right now. And the preliminary draft -- it's a
16 preliminary draft. I don't know when the final is going
17 to be out. The preliminary draft questions the model's
18 ability to predict low flows and salinities at those
19 flows.

20 So to say that CalSim II has now made that the
21 future is bright and shiny is wrong. We don't know yet,
22 but it's doubtful that after 40 years of salinity problems
23 in the river, readjusting the model results in compliance
24 for the rest of eternity.

25 The time period from 1995 to the present when we

1 haven't had any exceedances at Vernalis allegedly is a
2 time period of a number of extremely high flows. I would
3 assume most of the people in this room are familiar with
4 '95 and '97 and then this year, which had more water than
5 anybody could deal with. To throw those into some sort of
6 analysis as to whether or not there's an impairment in the
7 river is to do the opposite of -- or is to do the same
8 thing of what Mr. O'Laughlin complained about. He picked
9 a nice rosey scenario period and said oh, there's no
10 problems, while at the same time accusing the regional
11 board of picking the very bad scenario to indicate that
12 there is a problem.

13 Now, if you want evidence, which we will try to
14 supply. I apologize for not having it before this time.
15 I'm a one-man operation and the rest of the world is
16 fighting against us, I understand that.

17 (Laughter.)

18 MR. HERRICK: It's very sad. It's very sad.

19 (Laughter.)

20 MR. HERRICK: But if you need support for the
21 continuation of this listing, all you have to do is look
22 at the regional board's report supporting the TMDL. And
23 the Board's own counsel during the TMDL discussion at the
24 Board meeting addressed all of Mr. O'Laughlin's comments.
25 You can list a body that's upstream of a place that has a

1 problem or downstream, if it's a contributing factor.

2 But there is no doubt that there are huge volumes
3 of salt, upwards of 500,000 tons of salt entering the
4 river reach year. It goes over that in some years. Five
5 hundred thousand tons of salt.

6 Now, it's interesting to note that the people
7 that want this delisted are farmers who are getting, what,
8 50 EC water up in the hills and that they can't understand
9 why we're complaining about having degraded water quality
10 downstream. Well, the standard is not that we've gone out
11 of business because there's bad water quality. The
12 standard is what the Board is looking at and should apply.

13 Now, let me just finally say the idea of -- the
14 reference to Term 91 and Delta diverters being ordered to
15 stop diverting when fresh water is being released under
16 balanced conditions in the Delta. To my knowledge, the
17 SWRCB sent 4 Term 91 notices to southern Delta diverters
18 to shut down during those time frames.

19 Now, those are subject to litigation. We're not
20 going to go into that. But to suggest that the Board is
21 telling the south Delta to shut off operations in
22 summertime when there's fresh water being released is
23 again misleading the Board. That's not the situation.

24 There are riparians. And even if the Board wants
25 to discount riparians, because people are alleging that

1 these people that lived on the river and farmed for the
2 past 150 years aren't riparians, but all of the people in
3 the south Delta virtually have appropriative rights of
4 hire priority than the Bureau and they aren't ordered shut
5 off in the summer, never.

6 The purpose of an agricultural beneficial use
7 standard is to protect agricultural beneficial uses, and
8 that's why we're here. We're supposed to protect them.
9 Delisting the San Joaquin River is not taking a step
10 backwards, it's driving a car backwards. It's just a
11 nonsensical proposal to think that as we move forward and
12 the obligations on the State and federal projects to
13 finally meet the water quality standards in the Delta,
14 finally the time has come, and now there's an effort to
15 delay the standards, change the standards, delist the
16 river, you can't find one person, except Mr. O'Laughlin,
17 who thinks that there's no salinity problem on the San
18 Joaquin River. And that's the absolute truth.

19 Thank you very much.

20 CHAIRPERSON DODUC: So is there anyone in this
21 room that agrees with Mr. O'Laughlin, there is no salinity
22 problem in the San Joaquin River.

23 MR. GODWIN: Of course we all agree.

24 CHAIRPERSON DODUC: I see one hand.

25 All right, Mr. Arthur Godwin.

1 MR. GODWIN: Arthur Godwin for Merced Irrigation
2 District.

3 I'm going to switch gears and talk about a
4 different constituent. I want to talk about mercury.

5 CHAIRPERSON DODUC: My second favorite.

6 MR. GODWIN: Well, you'll like this one then.
7 Merced Irrigation District disagrees with the staff
8 recommendation at this time to list the Lower Merced River
9 from McSwain Reservoir to the San Joaquin River as
10 impaired for mercury. We feel that it's not warranted to
11 list the Merced River at this time, because of special
12 circumstances involved in the proposal to list.

13 First of all, the lines of evidence on which the
14 staff recommendation is based consist of only 2 fish
15 tissue samples collected in 1998. The 2 fish sampled
16 include large-mouth bass and a channel catfish. Both fish
17 were taken near the mouth of the Merced River at George
18 Hatfield State Recreation Area. We are aware of no other
19 fish tissue sampling for mercury that has been conducted
20 within that reach.

21 The entire watershed of the Merced River above
22 McSwain Reservoir including Lake McClure is not currently
23 listed for mercury. The San Joaquin River, on the other
24 hand, has been so designated from the Bear Creek mouth to
25 the Delta, a stretch of over 100 miles.

1 George Hatfield State Recreational Area is
2 located about 1 mile from the mouth of the San Joaquin
3 River -- or from the Merced River up above the San Joaquin
4 River.

5 Both Largemouth Bass and channel catfish are
6 highly mobile and could have easily swum up river. As a
7 result, we have no way of knowing whether these 2 fish
8 ingested mercury while residing in the San Joaquin River
9 or elsewhere.

10 Furthermore, Section 6 of your policy contains
11 guidelines for implementing the policy. And one of the
12 requirements is that samples be representative of the
13 waterbody segment. It also requires that samples
14 collected within 200 meters of one another are to be
15 considered samples from the same station. Your fact sheet
16 listing for this mercury states that the samples were
17 taken from 1 station at George J. Hatfield State
18 Recreation Area.

19 The segment proposed for listing, on the other
20 hand, is more than 56 miles long. Since both samples were
21 obtained from the same location, they failed to meet the
22 spatial representation guidelines contained in the policy.

23 Secondly, the sampling doesn't meet the temporal
24 guidelines as both samples were collected on the same day.
25 The guidelines state that if the samples were collected on

1 a single day, the data shall not be used as the primary
2 data set supporting the listing decision.

3 So, at this time, we urge the Board not to list,
4 at this time. At the very least, we would recommend that
5 the State Board delay listing until further data can be
6 collected.

7 Thank you.

8 CHAIRPERSON DODUC: Thank you.

9 Questions for Mr. Godwin?

10 I'm going to apologize ahead of time for mangling
11 this name. MS. Debra -- I won't even try it, from the
12 Turlock Irrigation District to be followed by Ms. Cindy
13 Paulson.

14 MS. LIEBERSBACH: Good morning -- good afternoon,
15 I should say. My name is Debra Liebersbach. I'm the
16 Water Planning Department Manager for the Turlock
17 Irrigation District.

18 I'd like to thank for the opportunity to provide
19 comments on the proposed listings.

20 (Thereupon an overhead presentation was
21 Presented as follows.)

22 MS. LIEBERSBACH: And I'd like to recognize the
23 significant effort expended by the staff in reviewing the
24 voluminous amounts of information provided in this
25 process. And I want to encourage staff to take the time

1 to seriously consider the public's comments and review all
2 of the data available to generate a true representation of
3 the current health of the waterbodies within the state.

4 Our comments today will focus on the Harding
5 Drain and Don Pedro Reservoir listings. Written comments
6 will follow within the next week or so.

7 The Harding Drain is a constructed agricultural
8 drain. It's a tributary to the San Joaquin river that is
9 used to convey a variety of agricultural and urban flows.
10 The drain was listed in 1998 for diazinon, chlorpyrifos
11 ammonia, and unknown toxicity based on data gathered
12 during the 1980s and 90s.

13 Until recently, the proposed listing for the
14 Harding Drain TMDLs were set as a low priority with no
15 specific completion dates specified. Now, recognizing
16 that -- recognizing the water quality impairments -- or
17 water quality improvements were needed -- excuse me -- the
18 local efforts were initiated to address water quality
19 impairments before TMDLs were developed.

20 Some examples of the improvements made include
21 nitrification processes installed by the City of Turlock to
22 reduce wastewater impacts associated with the ammonia
23 listing. A joint effort by State and local interests were
24 implemented to stop dairy-related discharges that were
25 originally associated with the ammonia listing. And, in

1 fact, the January of '05 executive officer's report to the
2 Central Valley Regional Board, cited the success of that
3 program.

4 In addition, there has been changes with respect
5 to agricultural discharges. The ag waiver is being
6 implemented with efforts underway to monitor the quality
7 of water entering local waterways from agricultural
8 sources, and BNPs are being implemented to address issues
9 identified through that process.

10 In addition, the use of diazinon chlorpyrifos has
11 gone down considerably since 1995. And a BMP, basin plan
12 amendment for diazinon and chlorpyrifos was recently
13 readopted by the Central Valley Regional Board for the San
14 Joaquin River that would result in additional
15 improvements.

16 --o0o--

17 MS. LIEBERSBACH: There's also State funding
18 that's been obtained to implement programs within the
19 watershed. Proposition 13 funding is being used to
20 install positive shut-off devices on field drains to give
21 growers a means to control the quantity and quality of
22 water leaving local fields. Prop 50 funding was obtained
23 to conduct water quality monitoring and develop a
24 watershed plan.

25 One goal of that project is to improve the water

1 quality, such that TMDLs are no longer required. As you
2 can see by this slide, the proposed changes in the TMDL
3 due dates come before the local projects designed to
4 address these issues are completed. Rather than
5 undermining these local efforts by imposing regulatory
6 controls before local efforts are effectively implemented,
7 I urge the State to support local efforts currently
8 underway. New data to be presented in a moment show that
9 these types of local efforts are extremely successful.

10 Instead of concentrating on issues already being
11 tackled at the local level, the State's limited resources
12 would be better spent in focusing on water quality
13 impairments not being addressed by other issues. With
14 that said, I'd like to turn it over to Dr. Cindy Paulson
15 with Brown and Caldwell to discuss the new data available
16 for the Harding Drain, and also to discuss our continuing
17 concerns regarding the scientific basis for the Don Pedro
18 Reservoir mercury listing.

19 CHAIRPERSON DODUC: Before you do, let me make
20 sure I understand, you're proposing waiting until
21 completion of the watershed plan implementation phase?

22 MS. LIEBERSBACH: Well, Cindy is going to talk a
23 little bit about it, but essentially we have new data that
24 shows that the ammonia listing and the diazinon
25 chlorpyrifos listings should be removed, and that there

1 are no longer impairment for those particular
2 constituents. And then for the toxicity, the unknown
3 toxicity listing, we want to continue to have the due date
4 far into the future to allow this process to unfold and to
5 allow the local efforts to be successful in removing --
6 identifying what that unknown toxicity might be and
7 improving the water quality associated with that to remove
8 the listing. And then the State doesn't need to develop
9 the TMDL.

10 CHAIRPERSON DODUC: And by far into the future
11 from this chart, are you suggesting 2011?

12 MS. LIEBERSBACH: In the current chart I believe
13 it's listed as 2019, so it's far in the future. We're
14 okay with that.

15 CHAIRPERSON DODUC: Okay.

16 DR. PAULSON: Thank you, Chair Doduc. My name is
17 Dr. Cindy Paulson. And I've been working with the Turlock
18 Irrigation District over the last several years on water
19 quality issues. And what I'd like to do today is present
20 some of the new data that have been collected.

21 --o0o--

22 DR. PAULSON: This is just a map of the TID
23 system, which shows the 3 sites in particular where data
24 have been collected for September -- from September 2001
25 through September 2003. The Ceres Main Drop 32 or CMD32

1 is located there at the end of Lateral 5, which is
2 essentially the canal that's upstream of the Harding
3 Drain.

4 The City of Turlock's Wastewater Treatment Plant
5 discharges into the Harding Drain just downstream of CMD32
6 and just upstream of HD1 or the first site on the upstream
7 end of the Harding Drain. The third site is about 5 miles
8 downstream at the mouth of the Harding Drain where it
9 joins the San Joaquin River.

10 And what I'd like to demonstrate here is just the
11 results of those data as they relate to the 3 constituents
12 that Ms. Liebersbach mentioned. We'll start with ammonia.

13 --o0o--

14 DR. PAULSON: And this is data from that first
15 upstream site. So Ceres Main Drop 32, this is again at
16 the end of Lateral 5, and reflects agricultural inputs and
17 some urban inputs. It's upstream of the Turlock
18 Wastewater Treatment Plant discharge. And what this
19 figure shows in the blue triangles are the data -- the
20 total ammonia data collected at that site. And the red
21 dashed line is the chronic criteria or the criteria
22 continuous concentration. Those are U.S. EPA values that
23 vary depending on the pH and temperature in the system.
24 So they bounce around.

25 And what this demonstrates, this plot, is that

1 all of the data that were collected over that 3-year
2 period, essentially 74 data they were collected every 2
3 weeks for 3 years, all of those values were at or below
4 the chronic criteria.

5 --o0o--

6 DR. PAULSON: Now, as we move downstream, this is
7 Harding Drain 1 site, that's just below where the City of
8 Turlock's wastewater comes into that system. And the
9 green vertical line is the timing of the improvements at
10 the City's wastewater treatment plant.

11 And the plot demonstrates, I think, pretty
12 clearly the improvement in water quality relative to
13 ammonia with the implementation of those improvements.
14 Post the improvements there were 2 exceedances, and that
15 was out of a total of 55 total data. Based on the water
16 quality control policy, the 2004 policy, the binomial
17 distribution would allow for 4 exceedances before the
18 water should be listed. So these data support delisting
19 of the Harding Drain for ammonia at this HD1 site
20 reflecting the improvements that took place with the
21 City's wastewater treatment plant.

22 --o0o--

23 DR. PAULSON: This is further downstream at HD2.
24 And this reflects even lower concentrations of ammonia.
25 Primarily as a function of dilution from other water

1 We've pooled all 3 of the sites here because we don't have
2 an upstream/downstream impact like we did with the City of
3 Turlock's Wastewater Treatment Plant. We compared these
4 values to the water quality guideline that is presented in
5 the 303(d) staff report. There's a table of guidelines.
6 And this value is essentially based on the criteria that
7 the Department of Fish and Game developed based on U.S.
8 EPA guidance. And this is a chronic or long-term
9 criterion, more restrictive than the acute criterion.

10 When we look at the data here pooled for all of
11 the sites, there were 219 data. There were 9 exceedances
12 of the water quality guideline. Based on the binomial
13 distribution, 18 exceedances would be allowed to even
14 support delisting.

15 So these data as well support the delisting.
16 There were half as many exceedances as would be allowed
17 essentially to delist this water.

18 CHAIRPERSON DODUC: Question. Is there available
19 data beyond the time period that you have listed here?

20 DR. PAULSON: There were some USGS NAWQA data
21 that were also collected just prior -- actually, I
22 think -- let me just check here. They were collected in
23 2001 and 2002 as part of the NAWQA studies. And there
24 were 11 data points each for chlorpyrifos and diazinon.
25 There were no exceedances of the water quality guidelines

1 for that time period.

2 One of the other things just to reiterate too is
3 that there has been a significant reduction in the use of
4 chlorpyrifos and diazinon since 1995. So I would expect
5 if there were more historic data available, you would be
6 able to see, I think, a decline that would reflect the
7 decline in use.

8 So based on this data for the pooled sites as
9 well as the individual sites, this meets the delisting
10 criteria for chlorpyrifos.

11 --o0o--

12 DR. PAULSON: A similar story for diazinon,
13 again, the water quality guidelines that are presented in
14 the 303(d) staff report. And for diazinon there were 8
15 exceedances out of 219 data. Again, there would have been
16 18 that would have been allowed.

17 So taken individually -- and this also the same
18 thing, the same story here, taken individually for each of
19 the sites as well as the pooled data, they all pass the
20 delisting criteria.

21 You heard earlier today about additive toxicity
22 of chlorpyrifos and diazinon. So using the equation
23 that's presented in the staff report for the Lower San
24 Joaquin River diazinon chlorpyrifos basin plan amendment,
25 we used the -- looked at additive toxicity. There's an

1 that are present in that system. It focused only on the
2 highest trophic levels ignoring data for a trophic level
3 3 -- several trophic level 3 samples. And the analysis
4 also discarded below detection values. So rather than
5 counting them in the analysis, they were discarded from
6 the analysis.

7 In the response to comments for the 2002 staff
8 report, there was acknowledgement that the approach was
9 not applied and there was a commitment to apply that in
10 future listings. There has been no further analysis or
11 work done on the Don Pedro Reservoir in the current staff
12 report. It's still listed with no additional discussion.
13 It's listed with a TMDL completion date of 2020.

14 It's our feeling that this really should be
15 reevaluated, that at a minimum the existing data should be
16 relooked at, but more importantly really that new data
17 should be collected using a clean technique approach,
18 using a more representative approach, collecting data that
19 would essentially meet the listing criteria that are
20 included in the 2004 guidance before it's left on the
21 303(d) list.

22 One other comment too is that there were no
23 health advisories -- have been none for Don Pedro
24 Reservoir. And back in 2002 when we contacted a
25 representative of the Tuolumne County Health Department,

1 he noted that he was aware of the proposed listing, but
2 was quote very surprised that he didn't feel that data
3 supported it. There doesn't seem to be any real basis for
4 that listing.

5 Just quickly in summary.

6 --o0o--

7 DR. PAULSON: Our request is that the Harding
8 Drain be delisted for ammonia, diazinon and chlorpyrifos
9 to reflect the improvements in water quality that have
10 been documented in the new data that are available. And
11 also to support the ongoing local projects that are State
12 funded to investigate and resolve the sources of unknown
13 toxicity. There is ongoing work there to address that,
14 and we're hopeful that reductions in ammonia and in
15 chlorpyrifos and diazinon use will help to support that,
16 but that if there are other sources of toxicity -- an
17 unknown toxicity, we will be able to get at those over the
18 next couple of years through this very detailed monitoring
19 and evaluation program for the Prop 50 project.

20 As Ms. Liebersbach suggested, we'd like to allow
21 sufficient time for ongoing local water quality
22 improvement efforts to be completed and would like to see
23 the dates not moved up for any of the Harding Drain TMDLs.
24 What we'd really prefer is that the 3 constituents be
25 delisted for Harding Drain.

1 And finally, we'd like to see Don Pedro Reservoir
2 delisted for mercury until more accurate data can be
3 collected. We will be summarizing these comments in a
4 detailed letter and we'd be happy to meet with staff to
5 discuss the new data at any time on the Harding Drain.

6 Thank you very much.

7 CHAIRPERSON DODUC: Thank you, Dr. Paulson.

8 Questions?

9 All right, Ms. Cynthia Elkins.

10 MS. ELKINS: Good afternoon. Thanks for allowing
11 me to address you again, Madam Chair and Members of the
12 State Board. My name is Cynthia Elkins. I'm with the
13 Center for Biological Diversity.

14 And, again, I'd like to reiterate our support for
15 the listing of exotic species for the San Joaquin --
16 portions of the San Joaquin River, the Delta waterways and
17 Bodega Bay. Exotic species are a significant problem
18 throughout the country, and, in fact, are the second
19 leading cause or second leading threat to endangered
20 species.

21 It's believed that exotic species adversely
22 affect more than twice the number of species as other
23 forms of pollutants. And it's also believed that exotic
24 species are a contributing factor or were a contributing
25 factor in almost 70 percent of the extinctions in north

1 America last century.

2 The problems with exotic species are not limited
3 to the watersheds that are proposed for listing, however,
4 and there are many other watersheds throughout the central
5 valley that are experiencing dramatic problems due to
6 non-native introduced species.

7 I'd like to focus on 2 of these. And we are
8 specifically requesting that the regional board -- or
9 excuse me, that the State Board add these waterbodies to
10 the list as well. These are the South Fork of the San
11 Joaquin River and the Middle Fork of the Kings River.

12 These areas flow from high in the Sierra from
13 high alpine lakes and traditionally, historically nearly
14 all of these lakes above -- well, actually all of the
15 lakes above 1,800 meters were naturally fishless.
16 Beginning in the late 1800s stocking of these lakes began
17 to occur and the streams as well with non-native trout
18 species such as brown trout.

19 Now, only approximately 7 percent of the lakes in
20 the national forests in this area are fishless,
21 specifically looking in the John Muir Wilderness Area.
22 And this is wreaked absolute havoc on the native species
23 in the area, in particular the native amphibians, but also
24 it is causing very serious adverse impacts to native
25 fishes, macro-invertebrates and other kinds of species.

1 Unfortunately, these non-native trout species are
2 highly effective predators. And because these alpine
3 lakes were naturally fishless, these species are not
4 adapted to having such predators in their habitat. The
5 decline of mountain yellow-legged frog in particular
6 attributed largely to the introduction of non-native trout
7 species. And the decline of mountain yellow-legged frogs
8 in response to these introductions was documented as early
9 as the 1920s. And since that time voluminous information
10 has been gathered and numerous studies have been
11 undertaken to further document these problems.

12 The mountain yellow-legged frog was formally
13 widespread throughout the Sierra Nevada mountain range
14 above 1,500 meters. But by 1994 studies and surveys
15 showed that its presence -- it was present in only about
16 15 percent of the sites where it was found in 1915.
17 Unfortunately, since 1994 these declines have continued
18 and the species is extirpated from many places that
19 historically occupied.

20 It's estimated that non-native trout
21 introductions is responsible for a 10-fold increase -- or
22 excuse me a 10-fold reduction in mountain yellow-legged
23 frog populations. This species is right at the brink of
24 extinction. And absent very concerted efforts to protect
25 it and reverse these problems, we're likely to see the

1 extinction of the mountain yellow-legged frog within our
2 children's lifetime.

3 So we strongly encourage the Board to consider
4 the evidence that we will be putting in front of you, and
5 to consider listing these waterbodies and ensuring that
6 the beneficial uses of these important watersheds are
7 protected.

8 Thank you.

9 CHAIRPERSON DODUC: A question for you Ms.
10 Elkins. Do you have any thoughts on Mr. Karkoski's
11 comment that if exotic species are listed that we specify
12 the species instead of a general listing?

13 MS. ELKINS: I think in some cases that might
14 make sense. But in places like San Francisco Bay where
15 you have such a large number of pollutants, that it makes
16 more sense to just list exotic species as a pollutant
17 source.

18 I know in Louisiana, for instance, there is an
19 estuary there that is listed for specific plant species,
20 for example. And there I don't know that they're really
21 experiencing other problems with other invasives.

22 CHAIRPERSON DODUC: Thank you.

23 Mr. Robert Carey.

24 MR. CAREY: Good afternoon, Chairman Doduc and
25 members of the Board.

1 My name is Robert Carey. I'm here today
2 representing W.M. Beaty & Associates. We are a land
3 management organization that manages family-owned
4 timberland to the tune of about 280,000 acres. Of those
5 280,000 acres approximately 20,000 of them drain to the
6 Fall River in Shasta County, which is currently on the
7 303(d) list as impaired for sediment and siltation. The
8 sources listed currently include silviculture, road
9 construction and agriculture.

10 The history of the listing for Fall River is a
11 little ambiguous. I have not been able to find any
12 information regarding source data that led to the original
13 listing. We're here to ask today that silviculture be
14 removed as a source of sediment from the Fall River. A
15 study was conducted in 1998 after a fair amount of
16 sediment began showing up in the river during high-flow
17 water years, primarily as a result of catastrophic events,
18 including flooding, the failure of a railroad culvert
19 crossing and a wild fire that had occurred several years
20 ago -- several years before that.

21 What the Tetra Tech study did was look at the
22 sediment that's in the -- currently in the Fall River and
23 evaluate what the likely sources of that material were.
24 They found that primarily reduced meadow function in some
25 of the overland tributaries immediately upstream from the

1 Fall River had been channelized in the 1960s. The result
2 was loss of that meadow function that slows water velocity
3 down and allows suspended sediment to settle out in those
4 alluvial flood plains. And also because the velocity is
5 maintained, it exacerbates other channel bank erosion.

6 So the Tetra Tech study identified a couple of
7 key things that needed to be done. Primarily, the Bear
8 Creek meadow that had been channelized in the 60s for
9 flood control needed to be restored. That work was
10 completed. It's on private land -- private parcel, not
11 managed by Beaty & Associates. But nonetheless, we were
12 involved in part of the design of that reconstruction.

13 And based on the Tetra Tech report, approximately
14 50 percent of the sediment entering the Fall River in any
15 one year would be controlled by restoring that naturally
16 functioning hydrologic meadow system, so it slows the
17 water down and allows a lot of sediment to settle out, et
18 cetera.

19 I'm going to jump to my notes here real quick. I
20 also wanted to mention that Beaty & Associates is here to
21 support the Fall River Resource Conversation District
22 information that was presented. I've got a letter dated
23 from them that was actually dated 11/22/05. I'm assuming
24 that you've already received that letter and it's in your
25 record. So, again, I wanted to just lend our support to

1 their position.

2 They have a number of folks on staff and they've
3 worked carefully with a number of folks from State
4 agencies, including the Central Valley Regional Water
5 Quality Control Board staff, field staff and executive
6 staff in the Redding office, and have gotten a tremendous
7 amount of support for our position at this point. We've
8 added our comments through, like I said, the regional
9 board staff, Cal Fish and Game, the Wild Trout Program,
10 and the Natural Resources Conservation Service who were
11 instrumental in developing the sediment budget for the
12 Tetra Tech report that I cited in my comments.

13 I wanted to mention that the reason the
14 restoration actions have been successful is because we've
15 had tremendous buy-in from local and land owners. People
16 that are interested in doing stewardship projects, fencing
17 meadow systems, controlling livestock, providing off-site
18 water so livestock don't have to access natural stream
19 banks, all of those things together have helped identify
20 and correct and eliminate the sediment sources that have
21 caused the sedimentation problem in the Fall River.

22 There still is an existing slug of sediment in
23 the river. The Tetra Tech report identified that it would
24 take many, many years to the turn of centuries before that
25 material moved out of the river naturally. The flows and

1 the spring-fed nature of the Fall River just do not lend
2 themselves well to flushing that material out. That was
3 one of the reasons that local public concern prompted the
4 investigation into sediment sources in the Fall River in
5 the early to mid-1990's.

6 So by revising the listing and removing
7 silviculture and road-building agriculture from the
8 current stressors, it sends a message to the cooperative
9 land owners that want to do these kind of stewardship
10 projects that, you know, their achievements are being
11 recognized. You reduce the amount of regulatory burden on
12 land owners simply because their adjacent to a listed
13 waterbody. And with the way the Central Valley monitoring
14 program is going right now for silviculture and
15 agricultural waivers, simply draining to a listed body ups
16 the bar, so that there is more paperwork, more regulatory
17 hurdles to cross when, in fact, there's no evidence
18 silviculture has ever been a contributing factor to Fall
19 River sedimentation problems.

20 So quoting from the Fall River Conservation
21 District letter, it says, "We specifically request that
22 the stressor be changed from sediment/siltation to
23 historic accumulations of sand-sized sediment and remove
24 silviculture and other items listed as current sources to
25 be replaced with meadow channelization and other historic

1 activities and catastrophic events.

2 Again, that's a more accurate depiction of the
3 existing condition within the Fall River and all of the
4 evidence that has been collected to identify those sources
5 and develop cause and effect relationships. From there,
6 the action has gone to -- from the identification of those
7 sources to actually corrective actions.

8 And I would just hope that the State Water Board
9 would want to reinforce cooperative land owner's ideas
10 that doing those kind of stewardship practices gets you
11 rewards and not punishments.

12 I'm trying to see if I had any other points to
13 make. Again, my comments are written. And I'm really
14 just trying to summarize and take some of the high points
15 out of them.

16 I would also encourage the State Board to engage
17 the regional board in a discussion, because like I said we
18 have vetted our opinions through the local people that are
19 involved and are quite knowledgeable about the system, and
20 have got no disagreement at all from them that this was an
21 appropriate time to take this action.

22 Thanks very much.

23 CHAIRPERSON DODUC: Thank you.

24 Mr. Lee Mao.

25 MR. MAO: Good afternoon, Madam Chair Doduc. My

1 name is Lee Mao. I'm with the Bureau of Reclamation here
2 in Sacramento. And my comments are fairly similar to Mr.
3 O'Laughlin, so I'm going to go through and highlight those
4 points of my comments. And we'll be submitting our
5 detailed supporting documents by the January 17th
6 deadline.

7 Reclamation supports the request to delist the
8 Lower San Joaquin River from Mendota Pool to Vernalis for
9 the salt and boron impairment. And we feel that they are
10 for the following reasons in summary: We have data more
11 than 10 years worth of data to show compliance with the
12 water quality standards at Vernalis.

13 CHAIRPERSON DODUC: What about Mr. Herrick's
14 comment that those 10 years included all the wet years?

15 MR. MAO: That's true, and that's why Reclamation
16 has made a statement to -- well, here's my next statement
17 is that Reclamation is committed in meeting the terms and
18 conditions as stated in our permit in the future years
19 including critical dry years, and that is stated in our
20 salt and boron comments that we submitted back in last
21 month in November.

22 The next point is the initial analysis used for
23 listing the Lower San Joaquin River did not consider the
24 significant impacts from the changes in the basin. And
25 these were very similar to Mr. O'Laughlin's comments

1 regarding hydrology, Grasslands Bypass project and also
2 the modeling -- the current modeling that was done.

3 Finally, the initial analysis was performed using
4 the model that didn't accurately reflect the basin. The
5 new CalSim II model, which is a planning model with the
6 new water quality module provides a more accurate
7 portrayal of the current conditions of the basin. And
8 that is the model that -- CalSim II is the model of choice
9 for current and future studies because of its updated data
10 sets and improved simulations of the San Joaquin River
11 operations, and particularly of the non-federal
12 reservoirs.

13 And Mr. Herrick's comments regarding CalSim II
14 peer-reviewed draft report stated that the CalSim -- you
15 know, the issues. We understand that -- I mean, there's
16 some documentation stuff that we are going to be working
17 on, we meaning Reclamation and DWR and of course
18 consultants.

19 But nevertheless, the peer-review group agrees
20 that CalSim II it's a more accurate reflection of the
21 current conditions of the basing. It's a more accurate
22 model. And we'll continue to go through refinements of
23 the model.

24 In summary, the water quality objectives have
25 been met for over 10 years, which is protective of the

1 identified existing and potential beneficial uses of the
2 Lower San Joaquin River. Reclamation believes that the
3 data and information presented to you warrants a request
4 to delist the Lower San Joaquin River from the 303(d) list
5 for salinity and boron. And, of course, we will be
6 submitting our supporting documents by the deadline.

7 Any questions?

8 CHAIRPERSON DODUC: No. Thank you.

9 And our final commenter today, the new
10 Deltakeeper. Welcome, Ms. Carrie McNeil.

11 MS. McNEIL: Thank you very much. New as of 2 or
12 3 days ago. I partly just wanted to come and introduce
13 myself to you guys and to express our continued interest
14 in this issue. And specifically to thank you for listing
15 the exotics in the Delta waterways and the portion of the
16 Feather River.

17 And not to repeat anything and just to add a
18 little to Ms. Elkins' comments. It was actually a
19 Baykeeper and the Northwest Environmental Advocate lawsuit
20 against the PA in which the court found that exotics are
21 considered pollutants just like bacteria and viruses and
22 it's not a source issue.

23 I also just wanted to briefly address some of the
24 issues brought up by the Turlock Irrigation District. And
25 that is that Deltakeeper, Baykeeper we applaud all the

1 efforts that industry and individuals are making to
2 increase the water and improve the water quality of this
3 state, but we feel it's very important to continue listing
4 waterways until those objectives have been met, because
5 it's just -- we can't base that on hope for future
6 continue improvements, though of course we hope that's the
7 direction it goes in.

8 I'd also like to encourage the staff to address
9 pesticide issues, including the additive and synergistic
10 effects in the Delta waterways due to the irrigated
11 agricultural runoff.

12 And, again, as the new person on the block here
13 and as a scientist, actually as an ecosystem health
14 veterinarian, I'm very excited to look into this
15 information and into the listing information and provide
16 detailed comments in January, but thank you very much and
17 appreciate it.

18 CHAIRPERSON DODUC: Thank you.

19 And with that, does anyone else have anything
20 they wish to add?

21 Seeing none, the record again will remain open
22 until January 17th, and the next workshop will be in
23 Pasadena on Thursday, January 5th.

24 Thank you all for attending.

25 //////////////

1 (Thereupon the California State Water Resources
2 Control Board public hearing adjourned
3 at 1:45 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Water Resources Control Board
7 public hearing was reported in shorthand by me, James F.
8 Peters, a Certified Shorthand Reporter of the State of
9 California, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27 day of December, 2005.

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JAMES F. PETERS, CSR, RPR

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