Public Comment on the
2004 Water Quality Inventory and 303(d) List

Texas Commission on Environmental Quality (TCEQ)
May 13, 2005

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The following comments address the Commission's November Draft 2004 Water Quality Inventory and 303(d) List and were submitted during a 30-day comment period beginning November 23, 2004 and ending December 23, 2004.

Comment Letter	Date received	Summary of Request or Comment (include segment number and water body name)	Summary of Action or Explanation
01	12/17	Segments 2441, 2451, 2452, 2453, and 2456 were listed for bacteria in Category 5a with a rank of U (TMDL Underway). Commenter proposed that the rank be changed to H (High) as there are no TMDL projects proposed or ongoing. Commenter emphasized the importance of the health of these bays. Gilleland Creek (segment 1428C) is listed in Category 5a for bacteria with a rank of L (Low). The rank should be changed to U (TMDL Underway).	The ranking for Segments 2441, 2451, 2452, 2453, and 2456 has been changed from U to M (for Medium), rather than High, consistent with other bacteria listings. The rank for Gilleland Creek has been changed to U (for Underway).
02	12/23	The TCEQ is delisting water bodies after reevaluation using the binomial method. Commenter states that this method, as currently applied, is recognized by TCEQ as flawed. Commenter states that the method is not more accurate for delisting, as previously suggested by TCEQ. It is merely less likely to list a water body erroneously. This flawed method should not be used to delist these water bodies. Of particular concern are segments 0404B (Tankersley Creek), 505D (Rabbit Creek), 0507A (Cowleech Fork), and 1604 (Lake Texana – Navidad River Arm). Commenter states that the fecal coliform geometric mean for segment 0404B (Tankersley Creek) consistently exceeds the standard and the geometric mean for E. coli is not reported.	The Commission directed the staff to use the binomial method for the 2002 and 2004 303(d) List. To assess limitations in the application of the binomial method, TCEQ has engaged a stakeholder workgroup to revise the use of statistical methods for delisting. A new methodology will be vetted through the public participation process and formally approved by TCEQ before being used in listing or delisting decisions. The 2006 assessment will be statewide and utilize more recent data. This new data, or changes to the methodology, may result in the future re-listing of some water bodies presently being delisted. Under the current methodology, the number of exceedances for fecal coliform required for listing has not been met. Additionally, the geometric mean for fecal coliform was miscalculated in the original listing in 2000. The 2000 geometric mean for fecal coliform should have been 136 colonies per 100 mLs. The area 3 miles below Tankersley Lake is now identified as a concern for bacteria only because the number of samples available for analysis is less than the required minimum of ten for full assessment. When there are less than four samples, the data set is not likely to be temporally representative and the geometric mean is not

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			reported.
		Commenter states that the geometric mean for bacteria in Rabbit Creek (Segment 505D) exceeds the standard.	Although the geometric mean exceeds the standard, the number of samples available for analysis is less than the required minimum of ten for full assessment. As a result, bacteria has been identified as a concern for this water body.
		Commenter states that the available information for Cowleech Fork (Segment 0507A) indicates that the geometric mean for bacteria exceeds the standard (349 colonies per 100 mLs fecal coliform).	The value for the geometric mean originally supplied was inaccurate. The corrected value is now accurately reported as 179 colonies per 100 mLs on the website.
		Commenter suggests that Segment 1604 (Lake Texana – Navidad River Arm) currently listed for impairment of the dissolved oxygen criteria, should not be delisted.	The impairment for dissolved oxygen on Lake Texana was established using grab samples in a past assessment and remained on the list until 24-hour data was available to confirm the impairment. The recent 24-hour data set indicates one exceedance in eleven samples. According to the current methodology, the water body is not impaired and, therefore, has been delisted.
		Commenter states that data used to support the delisting of Scott Bay (segment 2429) was not available on the internet and there was not an effective opportunity for public comment.	Data originally used to list Scott Bay were incorrectly assigned to the water body. Reassessment of the available data for this water body, although limited, indicates no concern for bacteria.
03	12/23	Commenter states that Segment 2422C Cotton Bayou should not be listed for low dissolved oxygen because it is the result of natural conditions in the bayou. Commenter states that the listing will have a negative economic impact on projected development in the area and will limit the ability to respond to growing demands for wastewater service and treatment. According to the Commenter, a more appropriate category would be 4c because preliminary modeling and field studies indicate low DO is a natural condition and not caused by a pollutant. The proposed listing, they state, was based on a very limited amount of data and there has not been sufficient time for a comprehensive study to determine an appropriate dissolved oxygen standard for the bayou. In Category 4c, routine monitoring would be conducted to provide a more complete data set.	TCEQ staff have reviewed the monitoring data and concluded that the dissolved oxygen criterion is not supported in Cotton Bayou. Evidence from modeling suggests the criterion is not attainable under current loading conditions - whether natural or human-caused. The model is not calibrated and cannot be used to determine if natural causes alone would result in dissolved oxygen levels below the criteria. This water body will be listed and the standard reviewed (in Category 5b). Sources/causes of low dissolved oxygen conditions must be determined, and data must be collected to determine if the biological community is still healthy under the current conditions. If subsequently placed in Category 5a, an Implementation Plan will be developed for the segment to identify strategies resulting in attainment.
04	12/23	Commenter states that they agree with the removal of Segment 0404A Ellison Creek Reservoir from Category 5C and its placement in Category 3. Commenter supports the decision to collect more fish tissue and sediment data throughout the reservoir.	TCEQ acknowledges Commenter's support. TCEQ deferred the assessment of toxicity when the December draft was posted, pending a study of sediment contamination and toxicity that TCEQ is planning.
		Commenter states that the Barnes Creek Arm should not be listed as a concern for metals in sediment or for overall sediment contaminant concerns. They state that only one sample was collected in the area and it was collected outside the 5-year period of record.	In the 2002 assessment, data from the Barnes Creek Arm and near the dam were aggregated and applied to both areas. The metals in sediment and overall contaminant concerns are carry-overs from the 2002 assessment and will remain concerns for 2004.

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		Commenter suggests that TCEQ statements that elutriate sediment tests are supported by whole sediment tests and levels of metals in sediment are incorrect and misleading. Commenter suggests that the 85th percentile results for sediment contaminants manganese and barium should be removed and the number of exceedances corrected for arsenic and selenium. Efforts should be made by the TCEQ to complete basic aquatic life (dissolved oxygen) and contact recreation use determinations for the next assessment.	The statement has been revised and now indicates that a concern for sediment toxicity has been identified from sediment elutriate tests and elevated contaminants. Arsenic, selenium, and barium were reassessed with the correct screening levels (85th percentile). Barium and selenium have been removed. Arsenic, however, exceeds the probable effects level. A screening level for manganese is not included in the guidance and the concern for manganese was removed. The TCEQ will conduct sampling including some aquatic life use parameters in conjunction with the special study for toxic sediments in the reservoir. Routine sampling is currently conducted at one site.
05	12/23	Commenter states that it is difficult to evaluate the appropriateness of assessments because the website does not provide enough information to reproduce the calculations. For a given assessment, some data is not provided, and documentation of which samples have been eliminated and the reasons behind their elimination is not provided. Better methods should be used and more documentation should be provided so that exclusion and choice of data decisions are transparent. For instance, TCEQ may opt to select the most representative data from several stations in close proximity. Commenter suggests that concerns should be handled in the same manner as impairments. Concerns should be carried over if insufficient data are available to reassess the water body. The Commenter gives Little Walnut Creek (1428D) as an example of a concern that was not carried over from the 2002 assessment.	TCEQ is currently developing new assessment tools and a more inclusive presentation of data provided on the website. Monitoring at the most representative sites is discussed in the annual Coordinated Monitoring meeting for the basin. New assessment guidance developed for 2006 will describe the method for identifying the most appropriate data to provide temporal and spatially representative assessments. The summary document for concerns contains only new concerns identified in 2004. Concerns carried over from previous years are identified on the individual water body fact sheets. Concerns are carried over in the manner the commenter suggests, and are included in monitoring planning guidance so that complete datasets can be developed for future assessments.
06	12/20	The dissolved oxygen concern for Lake Texana (Segment 1604) based on data obtained by grab sample should be removed since new, more accurate 24-hour monitoring data for dissolved oxygen indicates "no concern."	Conflicting information concerning Lake Texoma's compliance with the dissolved oxygen criteria has been removed. The dissolved oxygen criteria are fully supported based on the latest data.

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01	2/13	Commentor supports additional data collection for dissolved oxygen and flow; and suggests that recent data should included in assessment of Lavava River Above Tidal (Segment 1602). Commentor notes high levels of metal contaminants in sediment and suggests monitoring, particularly fish tissue sampling, in Finfeather and Country Club Lakes (1209A and 1209B) should be continued for the protection of human health.	Based on a review of recent data, nonsupport of the dissolved oxygen criterion for the Lavaca River Above Tidal (Segment 1602) has been assigned to Category 5b TCEQ is coordinating fish tissue sampling plans for Finfeather and Country Club Lakes (1209A and 1209B) with local cooperators.
02	2/20	Commentor suggests that additional sampling should be conducted to verify and further describe the bacteria impairment for Sabine River Above Toledo Bend Reservoir (Segment 0505) before a TMDL is considered.	Category 5c water bodies require additional information to describe the non-attainment of criteria and potential sources of contaminants before a TMDL is scheduled. TCEQ will develop additional information for the Sabine River Above Tidal (Segment 0505) to characterize the bacteria impairment and determine if TMDL development is the most appropriate water quality management action.
03	2/23	The commentor has submitted two groups of comments. The first group includes general comments that apply to numerous water bodies within the Draft 2004 Inventory and 303(d) List. The second group provides segment-specific comments and examples of problems illustrated in the general comments. These comments supplement comments previously submitted on the 2002 Inventory and 303 (d) List and the commentor requests that those earlier comments be included in the agency records for adoption of the assessment and list. To facilitate the review of the water body assessment reports, it would be useful to have a column that depicts the applicable standard, screening criteria, and any site-specific conditions controlling applicable criteria. General comments: 1. TCEQ has represented both in written and verbal response to comment on the 2002 303(d) List, that the necessity to develop differing procedures for listing and delisting procedures would be addressed by a stakeholder workgroup before the 2004 assessment. Without any further public participation, TCEQ has proposed still more delistings based on a methodology that staff has previously acknowledged as inadequate. TCEQ	This change would render the assessment more useful. These changes in display of information will be proposed for implementation in 2006. 1. Delisting procedures used for the assessment are consistent with the current methodology. TCEQ has convened a balanced stakeholder workgroup to revise the methodology. The resulting changes will be proposed for use in the 2006 assessment.

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		must retain previously listed water bodies and parameters on the 303(d) list until it develops a justified delisting methodology.	
		2. Inaccurate Type II Error probabilities given in the guidance document renders the entire document and assessment methodology technically unsound and statistically unreasonable.	2. The binomial approach was adopted in an effort to quantify a portion of the uncertainty associated with assessing use attainment status. TCEQ has established a Type I error probability of 20% as an acceptable risk of inappropriately classifying a water body as impaired. The number of exceedances used to determine attainment status is driven by this pre-determined probability of making a Type I error. The Type II error probability is not used to calculate the required number of exceedances for determining use attainment status. Type II error probabilities and their consideration in the listing/delisting process is a topic of review by an external stakeholder workgroup preparing guidance for the 2006 assessment. The resulting changes will be proposed for use in the 2006 assessment.
		3. TCEQ unjustifiably proposed a large number of water bodies in Category 5c. The CWA clearly requires TMDLs for all impairments and, until the requisite delisting justification is shown, impairments in Category 5c should have a TMDL priority assigned to ensure that the impairment is not ignored.	3. TCEQ's five-part categorization of water bodies complies with the CWA, EPA regulations, and EPA guidance. The CWA requires TCEQ to develop a TMDL for each pollutant for each water body currently in Category 5. Consistent with federal regulations and guidance, TCEQ has divided Category 5 into sub-categories in order to provide more information to the public and EPA regarding TCEQ's activities to address each impairment. A ranking of "D" has been assigned to water bodies in Category 5c to indicate that additional data and information will be collected before scheduling a TMDL. As stated on page 1 of the 303(d) List, the collection of additional data and information for impairments in Category 5c "will be conducted at the same time that TMDLs are being developed for the parameters in Category 5a" to ensure that progress is made on Category 5c impairments.
		In particular, mercury impairments are not appropriate for inclusion in Category 5c. Though addressing the impairments will be technically difficult, the environmental and health threat is significant and prompt action to develop TMDLs is needed.	Water bodies with mercury impairments were reclassified from Category 5a (a TMDL is underway, scheduled, or will be scheduled, to 5c (additional data and information will be collected before a TMDL is scheduled). Because of the complexity of mercury TMDLs, additional data from several sources (potentially from air, air emissions, watershed, water discharges, water column, sediment, and fish tissue) would be needed to develop a TMDL. The TCEQ has initiated a pilot project on Caddo Lake in order to develop a better understanding of sources and fate of mercury in East Texas water bodies before scheduling TMDLs.
		4. The use of WQS that have not been approved by	4. TCEQ used the Texas WQS adopted by TCEQ

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		EPA is problematic. TCEQ should base the 303(d) List on EPA-approved WQS.	in August 2000 as the basis for the 2002 and 2004 303(d) Lists. EPA will approve all relevant 2000 criteria and standards before approval of the 2004 303(d) List.
		5. Because EPA has not yet approved the 2002 303(d) List, TCEQ should include on the 2004 303(d) List impairments which were unjustifiably proposed for removal from the 2002 303(d) List.	5. The removal of water bodies from the 2002 303(d) List was based on the scientific information available at that time. If additional data become available that demonstrate that a water body does not meet water quality standards, TCEQ will propose listing that water body, whether or not it may have been previously removed from the 303(d) List. No such additional data were available at the time the 2004 303(d) List was prepared.
		6. It is not acceptable for the state to fail to list segments as impaired for violation of narrative standards. Both the Clean Water Act ("implement any water quality standard applicable to such waters," 33 U.S.C. § 1313 (d)(1)(A)) and EPA's regulations ("For the purposes of listing waters … water quality standards … include[e] numeric criteria, narrative criteria, water body uses, and antidegradation requirements." 40 CFR §130.7 (b)(3) are clear in requiring that water bodies must be listed as impaired if any applicable standard is not met. The Assessment Methodology must be revised to provide appropriate criteria for use in making impairment determinations for all narrative standards and the assessment must be revised to reflect application of these criteria. Parameters for which this issue is particularly problematic, include nutrient impairments, toxic substances in sediments, persistent changes in color, and taste and odor in drinking water. In addition, TCEQ must develop a methodology for assessing impairments resulting from a failure to comply with antidegradation requirements.	6. To determine support of the narrative criteria protecting aquatic organisms from toxic sediments, TCEQ employs direct tests of sediment toxicity. Water bodies area listed for narrative criteria if an impairment of a use can be linked to nonsupport of the criterion. TCEQ recognizes the need for defensible methods to assess all aspects of beneficial use support, is currently developing numeric criteria for nutrients, and has prioritized work with the help of an external stakeholder group to assess other aspects of the narrative criteria.
		Segment specific comments:	
		Lake Rita Blanca (Segment 0105) is proposed for delisting bacteria and pH solely on the basis of the move to the binomial method, without any new data. There is no basis for a determination that compliance with water quality standards is now attained. The proposed delistings are unjustified.	Lake Rita Blanca (Segment 0105) was delisted for bacteria and pH. Water bodies with listings from previous years that did not have sufficient data to assess in 2004 were re-evaluated using the binomial statistical method implemented in 2002. These parameters did not have sufficient exceedances in the year originally assessed to be listed using the more accurate binomial method, and have been reevaluated and removed from the 303(d) List.
		The Upper South Sulphur River (Segment 0306) is proposed for delisting for bacteria solely on the use of the binomial statistically-based method with no new data to support the delisting. The delisting in unjustified.	The Upper South Sulphur River (Segment 306) was delisted for bacteria. Water bodies with listings from previous years that did not have sufficient data to assess in 2004 were re-evaluated using the binomial statistical method implemented in 2002. A portion of the water body did not have sufficient exceedances in the year originally assessed to be

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			listed using the more accurate binomial method, and it has been reevaluated and removed from the 303(d) List.
		For Caddo Lake (Segment 0401):	For Caddo Lake (Segment 0401):
		1. The Clinton Lake area has greater than 10% exceedance of the pH criterion (2 of 17 samples) but is proposed for delisting solely on the use of the binomial statistically-based method and no defensible delisting strategy has been developed. The delisting in unjustified.	1. This portion of the water body did not have sufficient exceedances following the binomial method and was removed from the 303(d) List when re-assessed with the most recent data, and is now fully supporting.
		2. The proposed reclassification of Caddo Lake mercury impairments to Category 5c from 5a is unjustified. A TMDL is needed rather than a change in water quality standards.	2. Water bodies with mercury impairments were reclassified from Category 5a (a TMDL is underway, scheduled, or will be scheduled) to 5c (additional data and information will be collected before a TMDL is scheduled). This does not indicate that there may be a proposal to change the water quality standard for Caddo Lake, rather the need for more data and supporting information. Because of the complexity of mercury TMDLs, additional data from several sources (potentially from air, air emissions, watershed, water discharges, water column, sediment, and fish tissue) would be needed to develop a TMDL. The TCEQ has initiated a pilot project on Caddo Lake in order to develop a better understanding of sources and fate of mercury in East Texas water bodies before scheduling TMDLs on mercury impaired lakes.
		3. Ammonia Nitrogen level concerns in Caddo Lake should be acknowledged for the Goose Prairie Arm, Harrison Bayou Arm and the Lower 5000 acres of the lake. Although the required minimum of 10 samples have not been collected at each of the sites, exceedances merit a Concern classification on the water body because the requisite number of exceedances has already been reached.	3. In the targeted assessment for 2004, Concerns were not evaluated. The use of fewer than 10 samples for evaluating Concerns, similar to the method now used for use support (small sample sizes where the threshold number of exceedances have already been reached) will be considered as a change in methodology for the 2006 assessment.
		4. Caddo Lake metals in sediment exceed the 85th percentile in parts of the lake but are merely noted as Concerns. This is a deficiency in the state assessment guidance. Has an evaluation been done as described in the Guidance, i.e., an automatic evaluation for support of the narrative criteria.	4. The TSWQS currently have no numeric criteria for sediment. The guidance used to prepare the assessment does, however, have a method for using ambient toxicity tests to determine support of the narrative criteria. In the recent past, two such tests were performed and no toxicity was detected. At this time, there are no additional ambient sediment toxicity tests scheduled for this segment to directly assess the narrative criterion.
		The proposed delisting for pH is unjustified for the Neches River above Lake Palestine (Segment 0606). This delisting is based solely on the decision criteria for listing new segments. TCEQ has not developed a delisting procedure based on the binomial method or demonstrated that the standards are not met, a prerequisite for delisting.	The Neches River above Lake Palestine (Segment 0606) did not have sufficient exceedances following the binomial method and was removed from the 303(d) List when re-assessed with the most recent data, and is now fully supporting.

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		Segment 0606A (Prairie Creek) should indicate a Concern for nitrate. Although the sample size is less than the requisite minimum of ten samples, the high number of exceedances will result in an identified concern for nitrate when additional samples are collected.	Prairie Creek (Segment 0606A) was not assessed for nitrate. Secondary concerns, such as nitrate, were not targeted for reassessment in 2004. The evaluation of small sample sets for secondary concerns, as we have done this year for use support criteria, will be considered as a change in method for the 2006 assessment.
		For Sam Rayburn Reservoir (Segment 0610) a concern for arsenic in sediment is merited (29 out of 37 samples from across the lake exceed the probable effects levels). It appears that because the ten samples required for assessment in each of eight areas is not met, this concern has not been identified in the assessment. This results from a serious deficiency in the state's methodology.	Arsenic data available for Sam Rayburn Reservoir (Segment 0610) indicate elevated levels of arsenic over a large portion of the reservoir. A concern for arsenic in sediment will be identified in this assessment. The source of arsenic may be natural arsenic-bearing soils. More study needs to be done on the distribution of arsenic and the potential effects on aquatic life.
		The basis for delisting the aluminum impairment in the lake is unclear.	Recent aluminum in water samples for the lake were evaluated and indicate support of the criterion in the Upper Angelina Arm as well as the rest of the lake (75 samples across the lake with no exceedances).
		0615A (Papermill Creek). A high proportion of elevated ammonia and orthophosphorus concentrations result in only identification of secondary concerns. Though no assessment data are provided, the failure to meet the narrative criterion for color is identified only as a concern, rather than listing. This is a deficiency in the assessment guidance, and the procedure used to determine if these concerns for nutrients and color are a narrative violation are not evident.	Elevated ammonia and orthophosphorous concentrations are identified only as concerns because they have not been linked to nonsupport of a beneficial use in this water body. TCEQ collected color samples in Papermill Creek and in other streams potentially impacted by colored discharges in a statewide survey with the objective of developing a color assessment methodology. These data may be used to develop a quantitative method of assessing in- stream color resulting from wastewater discharges.
		For Lake Livingston (Segment 0803) the proposed delisting of the dissolved oxygen impairment for the "upper portion of the reservoir centering on SH 19" is unjustified. Two of 10 samples still violate the criterion for 24-hour average DO levels demonstrating greater than 10% noncompliance. Because TCEQ has not developed a defensible delisting approach using the binomial method, this proposed delisting, which is based solely on a decision that the criteria for a new listing using the binomial method are not met, is unjustified. It has not been demonstrated that the water quality standard is met, which is the necessary prerequisite for delisting.	Lake Livingston (Segment 0803) was originally identified on the 2000 303(d) List as partially supporting the aquatic life use due to depressed dissolved oxygen (DO). The original listing was determined based on the comparison of instantaneous grab DO measurements to the 24-hour DO criterion. Subsequently, the TCEQ determined that attainment of the 24-hour average DO criterion could not be assessed based on instantaneous grab DO measurements, use attainability must be determined by using 24-hour DO measurements that adequately cover the diel DO cycle and allow the calculation of a 24-hour mean DO value. Water bodies with known concerns for dissolved oxygen were targeted for this type of data collection. As a precaution, against increased permitted pollutant loads, water bodies listed in 2000 remain listed in Category 5c until 24-hour data sets are available for an accurate determination of criteria support. Thus, the TCEQ considers the 24-hour DO measurements used in the 2004 Assessment as representing the initial and valid determination of attainment of the 24-hour average DO criterion. The use of the established binomial method, described in the current

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			Guidance, is considered appropriate for determining use attainment.
		Biological data for Cummins Creek (Segment 1402A) indicate an impairment. This delisting is unjustified, for the reason given, that low flow conditions are the cause of the impairment. Information has not been presented to demonstrate the assertion that low flow is the sole cause and that pollutants do not contribute to the impairment.	Cummins Creek (Segment 1402A) This water body was removed from the 2004 303(d) List based upon available data and additional flow information from the data provider. TCEQ biologists concur with LCRA staff that flow conditions alter the habitat limiting the biological assemblages to those species expected in similar least-impacted low flow streams in the ecoregion. Continued biological monitoring is recommended for this segment to document the health of the aquatic communities. This water body will remain in Category 4c, indicating that this nonsupport of the standards is not caused by pollutants.
		Barton Creek (Segment 1430) data sheets do not reflect data after 2001. There is no documentation to indicate that water quality concerns were evaluated for support of the narrative criteria as stated in the TCEQ Assessment Guidance. Though results of ambient toxicity testing performed in 2003 were questionable, these data should be considered along with contaminant levels which exceed probable effects levels for sediment organisms in evaluating toxic substances and assessing compliance with narrative criteria.	For Barton Creek (Segment 1430) the date range indicated on the Data Summary sheet was in error. All data presented are within the current period of record 03/01/1998 - 02/28/2003. Available water quality data indicate support of designated uses for this segment. Sediment contaminant levels have been indicated as concerns for aquatic life and direct measurement of toxicity to aquatic organisms was undertaken in 2003. The ambient toxicity study performed in 2003 did not meet quality assurance requirements for use in the assessment. Sampling for toxicity and contaminants has been repeated in 2004 and based on this second and valid dataset, the narrative criteria is supported.
		Barton Springs (Segment 1430A) data sheets do not reflect data after 2001. There is no documentation to indicate that water quality concerns identified for metals and an organic compound s were evaluated for support of the narrative criteria as stated in the TCEQ Assessment Guidance.	Barton Springs (Segment 1430A) the date range indicated on the Data Summary sheet was in error. All data presented are within the current period of record 03/01/1998 - 02/28/2003. Available water quality data, including ambient toxicity testing, indicate support of the designated uses for this segment. Continued monitoring of contaminants and ambient sediment toxicity are planned.
		The delisting of dissolved oxygen for Lake Texana (Segment 1604) is unjustified. Two of 11 samples still violate the criterion for 24-hour average DO levels illustrating greater than 10% noncompliance. Because TCEQ has not developed a defensible delisting approach using the binomial method, this proposed delisting, which is based solely on a decision that the criteria for a new listing using the binomial method are not met, is unjustified. It has not been demonstrated that the water quality standard is met, which is the necessary prerequisite for delisting.	This portion of the water body, Lake Texana, (Segment 1604) was originally listed in 1999 based on the comparison of instantaneous grab DO measurements to the 24-hour DO criterion. Subsequently, the TCEQ determined that attainment of the 24-hour average DO criterion could not be assessed based on instantaneous grab DO measurements, use attainability must be determined by using 24-hour DO measurements to compute an average for comparison to the criterion. Water bodies with known concerns for dissolved oxygen were targeted for this type of data collection. As a precaution, against increased permitted pollutant loads, water bodies listed in previous years remain listed in Category 5c until 24-hour data sets are available for an accurate determination of criteria support. For the 2004 assessment, 24-hour measurement s are available and TCEQ considers these measurements as

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			representing the initial and valid determination of attainment of the 24-hour average DO criterion. The use of the established binomial method, described in the current Guidance, is considered appropriate for this determination of attainment.
		For Camp Meeting Creek (Segment 1806A), the proposed delisting for the dissolved oxygen impairment in the lower 9 miles is unjustified. Two of 18 of the 24-hour samples for minimum DO are below the applicable standard. That illustrates greater than 10% noncompliance. Because TCEQ has not developed a defensible approach using the binomial method, this proposed delisting, which is based solely on a decision that the criteria for a new listing using the binomial method are not met, is unjustified. That determination simply is not equivalent to a showing that the applicable water quality standard is met, which is the necessary prerequisite for delisting.	Camp Meeting Creek (Segment 1806A) was originally identified on the 2000 303(d) List as partially supporting the aquatic life use due to depressed dissolved oxygen (DO). The original listing was determined based on the comparison of instantaneous grab DO measurements to the 24-hour DO criterion. Subsequently, the TCEQ determined that attainment of the 24-hour average DO criterion could not be assessed based on instantaneous grab DO measurements, use attainability must be determined by using 24-hour DO measurements that adequately cover the diel DO cycle and allow the calculation of a 24-hour mean DO value. Water bodies with known concerns for dissolved oxygen were targeted for this type of data collection. As a precaution against increased permitted loads, water bodies listed in 2000 remain listed in Category 5c until 24-hour data sets are available for an accurate determination of criteria support. Thus, the TCEQ considers the 24-hour DO measurements used in the 2004 Assessment as representing the initial determination of attainment of the 24-hour average DO criterion. The use of the established binomial method, described in the current Guidance, is considered appropriate.
		Proposed delisting of Lavava Bay (Segment 2453) for dissolved oxygen and mercury in water are unjustified. Assessment indicates no new data. If data are available, TCEQ failed to provide meaningful opportunity to comment on those data.	The proposed delisting of Lavava Bay (Segment 2453) for DO and mercury in water were based on the "Lavava Bay Mercury and Dissolved Oxygen Total Maximum Daily Load Assessment". Raw data and a project report for this project are available on the TCEQ's TMDL web page. Due to an error on the assessment sheet, the 2004 summary data for the parameter was not displayed. Assessment data sheets and fact sheets will be corrected to reflect this new data set.
		Results of the geometric mean calculations are not provided in the assessment data sheets for Choke Canyon Reservoir (Segment 2116). As a result, it is not possible to provide meaningful comments on the proposed delisting.	The geometric mean of 1 was inadvertently left off the assessment data sheet for Choke Canyon Reservoir (Segment 2116). Data for single sample grabs are displayed and show no exceedance of the criterion. The geometric mean will be added.
		The proposed delisting for ambient toxicity in sediment in Arroyo Colorado Tidal (Segment 2201) is unjustified. The data sheets indicate that ambient toxicity was not assessed and that no data were obtained since the 2002 assessment. There is no apparent basis provided for delisting this parameter. The fact sheet indicates that it will continue to be identified as not meeting the standard for ambient toxicity. If data exist on which the proposed delisting is based, TCEQ has failed to	Data for the Arroyo Colorado Tidal (Segment 2201) was provided to the TCEQ from a TMDL study. There were 10 sediment toxicity samples and toxicity effects were shown. Due to an error on the assessment sheet, the 2004 summary data for the parameter was not displayed. Assessment data sheets and fact sheets will be corrected to reflect this new data set.

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		provide meaningful opportunity to comment on those data.	
04	2/13	Choke Canyon Reservoir (Segment 2116) was reassessed in 2004 and remains listed as a Category 5c for total dissolved solids. In September 2002 NRA supplied TCEQ with data directly correlating TDS with lake levels. After review of the data, staff responded that Choke Canyon will be considered for criteria review. The category for Segment 2116 should be changed from 5c to 5b. Aransas River Above Tidal (Segment 2004) was not reassessed in 2004, it remains listed as having a concern for DO. After the 2002 assessment, if was discovered that beginning in August 1998, samples were being taken on Aransas Creek, an intermittent stream, not the Aransas River. The correct location has again been sampled since July 2002. The incorrect location was assigned a new SWQM number and assigned to those sampling results. Therefore, there were only 3 samples for the Aransas River during the assessment period, which are not enough data points to determine whether or not there is an actual DO concern on this segment.	For Choke Canyon Reservoir (Segment 2116), the total dissolved solids listing has been re-assigned to Category 5b, indicating that a standards review will be done. Aransas River Above Tidal (Segment 2004) was not assessed in 2004 and only shows a concern for DO based on the 2002 assessment. It will be reassessed in 2006 with a more recent and corrected data set. It is understood that the data has now been assigned to the correct stations on the Aransas River and Aransas Creek.
05	2/19	Segment 1701 (Victoria Barge Canal). Most-recent grab dissolved oxygen data for Station 12536 reflect no concern (zero exceedances; eight measurements). However, the fact sheet indicates concern with limited data set (one exceedance; eight measurements). The concern for dissolved oxygen should be removed based on the most-recent grab sample data. A nutrient enrichment concern was identified for Segments 1803B (Sandies Creek), 1803C (Peach Creek), and 1810 (Plum Creek). Low ammonia values reported since 2001 suggest that a nutrient enrichment concern is not warranted. Prior to 2001 high values occur fairly frequently. The difference is likely due to a change in laboratory procedure. An earlier procedure, with a high reporting level, was prone to false positives.	Victoria Barge Canal (Segment 1701) was not assessed in 2004 and shows a concern for DO based on the assessment in 2002. It will be reassessed in 2006 with the most current and available data. For Segments 1803B (Sandies Creek), 1803C (Peach Creek), and 1810 (Plum Creek) secondary concerns, such as nutrients, were not targeted for reassessment this year but will be reviewed in 2006. TCEQ will review the accuracy of these ammonia data from this lab and adjust the dataset for the 2006 assessment.
06	2/20	Segment 1602 (Lavaca River Above Tidal). Both streambed size and flow differ greatly over this long segment and the upper portions of the river which have been identified as impaired have been sampled extensively in a special study conducted by the river authority. Commentor suggests these data should be a first step in conducting a Use Attainability Analysis on the water body. For Lake Texana (Segment 1604), the dissolved oxygen data for this segment reflect no concern. However, the fact sheet indicates concern.	Lavaca River above Tidal, (Segment 1602) will be reassigned to Category 5b, indicating the need for a standards review. The commentors review of the data is correct. Further review of the 2004 assessment data for Lake Texana (Segment 1604) reveals data were incorrectly compared against criteria. The fact sheet will be edited to indicate support of the

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			aquatic life use but a Tier 2 concern for DO grab samples.
07	2/20	The commentor has concerns about Sulphur Creek (Segment 1217B). The downstream receiving segment Lampasas River above Lake Stillhouse (Segment 1217) is listed impaired for pathogens. The commentor has water quality data from 6 sites on Sulphur Creek and 2 sites on the Lampasas River. They believe the data show there are concerns related to depressed DO and elevated phosphorus, nitrate, and fecal coliform.	The Lampasas River above Lake Stillhouse (Segment 1217) was identified as not supporting the contact recreation criterion for bacteria in the 2002 assessment. Sulphur Creek (Segment 1217B) however, is not currently listed. The dataset for Sulphur Creek has been reviewed and the laboratory analysis methods have been determined inappropriate for the assessment. The data will not be used.
08	2/23	Unnamed tributary of Halls Bayou (Segment 1006I) and Country Club Bayou Above Tidal (Segment 1007K) - Why have each of these segments been split into two assessment areas? The area descriptions cover the entire stream length and the parameters are the same.	In the 2002 assessment the decision was made to combine datasets on Houston's urban streams where multiple monitoring stations showed consistent water quality conditions. The objective was to make addressing water quality impairments through TMDL and other special studies more efficient. The Country Club Bayou (Segment 1007K) and Unnamed Tributary of Halls Bayou (Segment 1006I) assessment units were similarly redefined in the 2004 assessment. This action does not alter the use support status for these water bodies.
09	2/23	Palo Pinto Creek below Palo Palo Pinto Reservoir (Segment 1206D) has a mean sulfate level of 55.35 mg/l which meets the raw and drinking water standards of 500 and 300 respectively. Please remove the Public Water Supply (PWS) Concern for sulfate.	A review of the data for Palo Pinto Creek below Palo Palo Pinto Reservoir (Segment 1206D) reveals two data points of significantly higher concentrations than the remainder of the data set. This resulted in exceedance of the PWS criteria. The laboratory responsible for the analysis of the sulfate data has found their results to be in error and the two data points in question were excluded from the next assessment. Secondary Concerns were not evaluated in the 2004 targeted assessment, therefore, the concern status will be revised in the 2006 assessment.
10	2/23	Segment 0615 (Angelina River/Sam Rayburn Reservoir). Commentor concurs with the categorization of the segment into 5c, impaired and needing additional information before a TMDL is scheduled. Low DO is observed both above and below the confluence with Papermill Creek, so it is clear that upstream loadings and natural conditions contribute to low DO. The mercury contamination in fish identified in the assessment is a regional water quality issue. Segment 0615A (Papermill Creek). Commentor concurs with TCEQ assessment outcome of fully supporting for assessed uses, and provided information on the effluent quality of the mill which discharges to the creek.	Additional data collection in the Angelina River arm of the reservoir (Segment 0615) will be addressed through coordinated monitoring before a TMDL is scheduled. The 2006 assessment of Papermill Creek (Segment 615A) will include more recent instream data and it is expected that the ambient data set will reflect the improved quality of effluent that the creek receives.
11	2/23	Patrick Bayou (part of Segment 1006) is currently listed in Category 5c for sediment toxicity and is designated as a National Priorities List site under the federal Superfund program. An assessment and investigation process is underway to develop an Administrative Order of Consent and a Scope of	In discussions surrounding the Patrick Bayou Superfund Site, TCEQ has indicated that it fully appreciates the investigations being performed for Superfund may provide data for 303(d) listing and vice versa. TCEQ has also expressed a willingness to style investigations of Patrick Bayou (part of

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		Work (which should be complete in 2004) to document the appropriate site remedial cleanup plan. Therefore, Patrick Bayou should be moved to Category 4b because remedial activities being developed under the Superfund regulatory program should qualify as "other pollution control requirements" reasonably expected to result in the attainment of the water quality standard for sediment toxicity. Absent moving Patrick Bayou from Category 5c to Category 4b, TCEQ should provide guidance as to when in the Superfund process it is appropriate to move a water body from Category 5c to Category 4b.	Segment 1006) to allow for multiple uses of data collected. However, the Superfund program and 303(d) program are different mandates. The federal Superfund program is tasked with remediating contaminated sites, that is, historical contamination. The 303(d) program requires that states list those water bodies that do not meet water quality standards. States then perform TMDLs; Texas implements the TMDL through an Implementation Plan that sets limits, numerical or operational, on ongoing point and nonpoint source discharges. Though considerable effort has been expended in attempting to determine the cause of sediment toxicity in Patrick Bayou, it is as yet undefined. Consequently, it cannot be determined if the source is historical, ongoing, or both. It is, therefore, appropriate to ensure that sediment toxicity is addressed by examining both avenues–using both Superfund and the 303(d) program. In addition, Category 4b is not an appropriate category for sediment toxicity in Patrick Bayou. Water bodies are included in this category when TCEQ has determined that pollution controls, other than TMDLs, are expected to result in the attainment of water quality standards in the near future. There are currently no legally enforceable pollution control requirements in place that will result in Patrick Bayou meeting water quality standards for sediment toxicity in the near future. No potentially responsible party (PRP) or PRP group has entered into a legally binding document that would require them to remediate the site. TCEQ will evaluate whether to move Patrick Bayou from Category 5c to Category 4b for sediment toxicity after a PRP or PRP group has entered into a legally binding agreement with EPA and the State of Texas that includes pollution control requirements which TCEQ determines are reasonably expected to result in the attainment of the water quality standards in the near future.
12	2/20	1. The Little Cypress Bayou (Segment 0501B) listing for low dissolved oxygen was caused by treated wastewater exceeding the assimilative capacity of the stream. Chronic toxicity in water was caused by a high biochemical oxygen demand (BOD) rather than toxic substances. The wastewater will be diverted from this stream upon completion of new wastewater infrastructure. A more appropriate listing would be : concern for low dissolved oxygen, Category 4b; and concern for chronic toxicity in water, Category 4b. 2. The Nichols Creek (Segment 0502A) listings for high bacteria, chronic toxicity in water, and depressed dissolved oxygen characterize the natural swamp conditions typical of the relatively flat East Texas bottom lands. All of these impairments should be in Category 4c.	1. Water bodies identified in Category 4b have an assurance that water quality controls will be implemented and result in attainment of the standard within a reasonable time period. Water quality controls (new infrastructure) are in the planning stages and impairments for Little Cypress Bayou (Segment 0501B) will remain in Category 5c until TCEQ can ensure that controls will be implemented and standards attained. 2. The water quality standards and criteria are not supported in Nichols Creek (Segment 0502A). When adequate information have been developed to indicate that the standards may not be accurate, this water body will be moved to Category 5b,

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		3. The Toledo Bend Reservoir (Segment 0504) listing for depressed dissolved oxygen was caused by sampling in the backwater area of the reservoir and this site is not representative of the reservoir. This impairment should be in Category 4c.	indicating that a review of the criteria will be scheduled. 3. For Toledo Bend Reservoir (Segment 0504) the listing for depressed dissolved oxygen has been assigned to Category 5c. TCEQ recognizes that determination of standards compliance and use support in the riverine portion of reservoirs is problematic. TCEQ has initiated a project to review the use of data collected in the transitional zones of reservoirs.
		The listing for mercury in fish tissue was not caused by a controllable source and would not be conducive to development of a TMDL. The best course of action would be continued periodic monitoring to track possible changes. A new Category (4d) should be developed for these types of water quality problems.	Water bodies with mercury impairments were reclassified from Category 5a (a TMDL is underway, scheduled, or will be scheduled), to 5c (additional data and information will be collected before a TMDL is scheduled). Because of the complexity of mercury TMDLs, additional data from several sources (potentially from air, air emissions, watershed, water discharges, water column, sediment, and fish tissue) will be needed to develop a TMDL. The TCEQ has initiated a pilot project on Caddo Lake in order to develop a better understanding of sources and fate of mercury in East Texas water bodies before scheduling TMDLs on mercury for impaired lakes such as Toledo Bend Reservoir (Segment 0504).
		4. The Palo Guacho Bayou (Segment 0504C) listing for chronic toxicity in water is not a persistent problem and not likely the result of toxic substances. Biological assessments do not show impairments. A more appropriate listing would be: concern for chronic toxicity in water, Category 2.	4. The Palo Guacho Bayou (Segment 0504C) listing for chronic toxicity in water is based on direct toxic effects on aquatic test organisms. Routine biological assessment may not detect toxic effects to sensitive organisms or life stages.
		5. Grace Creek (Segment 0505B) is listed for depressed dissolved oxygen and bacteria. During a special study dissolved oxygen measurements were always in an acceptable range and the aquatic community appeared healthy. Bacteria levels frequently exceeded the numeric criteria in the Texas Surface Water Quality Standards and appear to be from widespread nonpoint sources.	5. The depressed dissolved oxygen listing for Grace Creek (Segment 0505B) was based on dissolved oxygen grab samples. Support for dissolved oxygen criteria will be re-evaluated upon collection of representative and adequate 24-hr dissolved oxygen measurements. Bacteria will remain in 5c indicating additional information is needed on the sources of bacteria.
		6. The Rabbit Creek (Segment 0505D) listing for bacteria should be moved to Category 4c. Fecal coliform samples are elevated but below the criteria for single grabs. Results from a special study which indicated water quality, sufficient to support a healthy biological community, has been sustained over time periods long enough to allow for full life cycles.	6. A review of the original listing for Rabbit Creek (Segment 0505D) and the recent data indicate that the criteria for bacteria is supported, though elevated. Fecal coliform has been identified in the assessment as a Concern.
		7. The Harris Creek (Segment 0506A) listing for depressed dissolved oxygen should be moved to Category 4c due to additional monitoring which indicated a healthy aquatic community with no impairments from occasional low dissolved oxygen levels.	7. The water quality standards and criteria are not supported in Harris Creek (Segment 0506A) . When adequate information have been developed to indicate that the standards may not be accurate, this water body will be moved to Category 5b.
		8. The Little White Oak Creek (Segment 0506G)	

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		listing for chronic toxicity in water should not be considered a concern or an impairment in this water body therefore this water body should be in Category 2. Toxicity was listed based on a very limited data set collected as part of a screening study. Biological and habitat assessments on this stream indicate a healthy aquatic community with no impairments from toxicity. 9. The Lake Tawakoni (Segment 0507) listing for depressed dissolved oxygen should be moved to Cateogry 4b. Initial results of 24hr monitoring indicate no problems for dissolved oxygen. 10. Adams Bayou Tidal (Segment 0508) and sub-segments have been included with the Orange County TMDL Project and should be categorized as 5a. 11. Cow Bayou Tidal (Segment 0511) and sub-segments have been included with the Orange County TMDL Project and should be categorized as 5a.	8. Three of five tests on Little White Oak Creek (Segment 0506G) indicate ambient toxicity in water. This water body is listed based on direct toxic effects on aquatic test organisms. Routine biological assessment may not detect toxic effects to sensitive organisms or life stages. 9. A representative and adequate data set of 24-hr dissolved oxygen measurements is not yet available for Lake Tawakoni (Segment 0507). This water body will remain in Category 5c which indicates that additional information and monitoring is needed. 10. All Adams Bayou Tidal (Segment 0508) and sub-segments included in the Orange County TMDL project have been moved to Category 5a in the draft list. 11. All Cow Bayou Tidal (Segment 0511) and sub-segments included in the Orange County TMDL project have been moved to Category 5a in the draft list.
13	2/23	TCEQ should solicit stakeholder's input and participation of CRP partners for categorizing and ranking water bodies. The commentor notes that Gilleland Creek (Segment 1428C) was placed in Category 5c. This water body receives municipal effluent, and TCEQ is considering a permit application for land disposal of municipal sludge near the creek. The commentor recommends a more intensive monitoring plan for this segment. Commentor does not agree with assessment methodology for Bay and Estuary segments. The dissolved oxygen assessment method could be improved by more accurately reflecting variations within the water body through a refined determination of the mixed surface layer.	Category 5a water bodies are ranked on the draft 303(d) list as High, Medium, or Low for TMDL initiation. Planning and priority for activities related to additional monitoring for Category 5a water bodies, and standards review for Category 5b water bodies are discussed and evaluated at the stakeholder-driven Basin Monitoring Coordinating Meetings held each spring. Gilleland Creek has been assigned to Category 5a, indicating that a TMDL will be scheduled. Monitoring activities for Gilleland Creek (Segment 1428C) will be discussed in the upcoming Clean Rivers Partners coordinated monitoring meeting. The methods for determining compliance with the dissolved oxygen criteria are being reviewed by a stakeholder workgroup developing new guidance. The resulting changes will be proposed for use in the 2006 assessment.
14	2/23	TCEQ has listed parts of Caddo Lake (Segment 401) and Cypress Creek (Segment 402) as not supporting the water quality standards. 1. TCEQ Station ID 15022 (State Park) exceeded pH standards 22 times within five year period, based on a sample size of 55 samples. Recommendation: Data supports listing as Not Supporting. 2. TCEQ Station ID 10294 (Carters Lake) exceeded	For Caddo Lake (Segment 401) and Cypress Creek (Segment 402): Comments 1-7: Information from other sources and data collected by the commentor have been reviewed by TCEQ staff from the Surface Water Quality Monitoring (SWQM) Team and the Total Maximum Daily Load (TMDL) Team. The actual number of samples and exceedances from the commentor are not reflected in the data summaries for each individual portion of the segment because

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		pH standards 18 times within five year period, based on a sample size of 55 samples. Recommendation: Data supports listing as Not Supporting. 3. TCEQ Station ID 14236 (Clinton Lake) exceeded pH standards 15 times within five-year period, based on a sample size of 55 samples. This large data set supports listing as Partially Supporting. However Review of 2001 and 2002 data, notes that the standard was exceeded 6 out of 11 times in 2000, and 5 out of 10 times in 2001. Recommendation: Annual data for two years supports listing as Not Supporting. 4. TCEQ Station 10286: (Harrison Bayou) exceeded pH standards 14 times within five-year period, based on a sample size of 55 samples. This data would support Partial Support. However, in 2001, exceeded standard 5 out of 10 times. Recommendation: 2001 data supports listing as Not Supporting. 5. TCEQ Station 10283: (Mid Lake) exceeded pH standards 8 times within five-year period, based on a sample size of 55 samples. Recommendation: This data supports Partial Support 6. Review of CRP 24-hour DO data indicates that not all data was included in the assessment for Caddo Lake (Segment 401) or Big Cypress Creek below Lake O' the Pines (Segment 0402). 7. Additional data sources should be included in the assessment review. For example, *USGS Occurrence of and Trend in Selected Sediment-Associated Contaminants in Caddo Lake, East Texas*, 1940-2002. Water Resources Investigations Report 03-4253.	these data were not submitted under a TCEQ-approved Quality Assurance Project Plan (QAPP). However, data which were collected under approved QAPPs were used for several portions of the water body and have resulted in non-attainment of the Texas Surface Water Quality Standards for pH and dissolved oxygen (DO) for several areas of the lake. Any water quality management initiatives for the areas of non-attainment of any portion of Caddo Lake will benefit the lake in its entirety. The TMDL Team is currently evaluating options for continued long-term study of DO and pH exceedances of the criteria in Caddo Lake and supports the cooperation and involvement of the commentor in these endeavors.
15	2/23	Rock Creek (Segment 0101B), Mud Creek (Segment 0201A), and Post Oak Creek (Segment 0202E) have been listed for non-support of the *E. coli* criteria. *E. coli* data developed from the membrane filtration method (Storet 31648) should not be included in assessing contact recreation uses. Only data developed by the Idexx method (Storet 31699) should be used. Nutrient enrichment concerns for Rock Creek (Segment 0101B) were not assessed despite current data indicating exceedances of criteria. All fecal data collected on Wolf Creek (Segment	For Rock Creek (Segment 0101B), Mud Creek (Segment 0201A), and Post Oak Creek (Segment 0202E), both methods for determining *E. coli* concentrations are U.S. EPA approved and are identified by TCEQ as acceptable for assessment purposes. Rock Creek is designated in Appendix D of the TSWQS as perennial and the contact recreation standard applies only for conditions of flow above the 7Q2. Samples for bacteria were reviewed and those collected at low flow were removed from the assessed data set considered for use attainment. As a result of this review, this water body attains the contact recreation use and was removed from the proposed draft. For Rock Creek (Segment 0101B), secondary concerns such as elevated nutrients were not targeted for reassessment this year. This segment will be revisited for the 2006 assessment. Wolf Creek (Segment 0104) supports the contact

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		0104) should be used as samples were collected at a stream flow above 7Q2. Consider reclassifying the upper one mile of Rock Creek (Segment 0101B) to intermittent. Consider reclassifying the lower end of Post Oak Creek (Segment 0202E) to intermittent.	recreation use and all available fecal data within the assessment date range were used. Rock Creek (Segment 0101B) is designated in the TSWQS as perennial from the confluence of the Canadian River to SH136 in Borger. Changes in the water quality standards will be considered in the next triennial review of the standards and required to change the flow-type for this water body. The lower end of Post Oak Creek (Segment 0202E) has been identified as intermittent with pools and has been reassessed accordingly.
16 & 18	2/23	Ellison Creek Reservoir (Segment 0404A) has been listed by the TCEQ for ambient toxicity in sediment. 1. TCEQ does not have authority to list Ellison Creek Reservoir for chronic toxicity in sediments because TCEQ has not adopted water quality criteria for sediments. Additionally, there are no adopted narrative standards translator mechanisms for sediment toxicity. 2. The chronic toxicity test used is not the appropriate test for assessing the toxicity, if any toxicity exists, of the reservoir's sediments 3. Other reliable test methods for ambient toxicity have produced conflicting results 4. The chronic toxicity test used was not properly performed and the results are therefore invalid	For Ellison Creek Reservoir (Segment 0404A): 1. TCEQ has authority to place water bodies, including Ellison Creek Reservoir, on the 303(d) List for sediment toxicity. TCEQ has adopted water quality standards that apply to sediments and thus may list water bodies on the 303(d) List for sediment toxicity just as for other water quality standards. 30 TAC Section 307.1 states that it is the purpose of the Texas Surface Water Quality Standards Chapter 307 to "maintain the quality of water in the state consistent with...propagation and protection of terrestrial and aquatic life..." 30 TAC Section 307.4(b)(2) requires water to be "essentially free of...sediment layers which adversely affect benthic biota or any lawful uses." Sediment toxicity which adversely affects benthic biota or other aquatic life violates the general narrative water quality standard established in 30 TAC Section 307.4(b)(2). 30 TAC Section 307.4(I) states that "physical components of the aquatic environment will be maintained or mitigated to protect aquatic life uses." Sediments are a physical component of the aquatic environment that must be maintained or mitigated to protect aquatic life uses. 30 TAC Section 307.4(I) may be violated where sediment toxicity is adversely affecting benthic biota or other aquatic life. Neither Texas law nor federal law requires that a translator mechanism be adopted before placing a water body on the 303(d) List for sediment toxicity. Comments 2-10 addressed by the following: The Fact Sheet now indicates that the concern for toxicity in sediment was established using elutriate tests, and that whole sediment tests and contaminant levels in sediment also support this determination. The description for toxicity in sediment was changed from concern for "chronic toxicity in sediment" to concern for "acute toxicity in sediment to aquatic organisms."

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		5. There is no proof of biological impairment in the reservoir 6. TCEQ failed to consider bioavailability, including the role of acid-volatile sulfides 7. Assuming the TCEQ toxicity results are valid, the six sediment samples are not representative of the entire reservoir 8. The available information suggest a Category 2 designation. 9. In the inventory, the description "Metals in fish tissue – Lead" is misleading and should be changed to "Metals in fish tissue" 10. The Source Category for the source of detected PCBs in fish samples taken from the reservoir should be changed from "Major Industrial Point Sources" to "Unknown Source" because the TCEQ has no data to establish the source of the PCBs detected in the fish tissue samples.	The source description for contaminants in sediment, concern for toxicity in sediment, and PCBs in fish was changed from "major industrial point sources" to "industrial point sources," and "unknown nonpoint source" was added. The nonsupport of the narrative criteria has been removed and a concern is now described for acute sediment toxicity to aquatic organisms in the "southeast part of the reservoir near the spillway." This water body is now in Category 3. The area of concern for metals in sediment has been revised and is described as "southeast part of the reservoir near the spillway" and the "Barnes Creek arm" of the lake. The total area of the reservoir has been revised to 1516 acres. Contaminant information for fish tissue was changed from "no concern for metals in tissue - lead" to "no concern for metals in tissue." The TDH and TCEQ have planned a survey of fish in the reservoir in the next several months to determine if there is any risk from contaminants in fish tissue to humans who eat fish in the lake. The TCEQ will also conduct a survey of the entire lake for sediment toxicity and contaminants in 2005.
17	2/20	Laguna Madre (Segment 2491) was identified in the 2002 assessment (the segment was not reassessed in 2004) as a concern for bacteria in oyster waters in the 18.1 square miles near the Arroyo Colorado and along the ICWW. There is no commercial oyster harvesting south of Baffin Bay and therefore should be removed from the concerns list for shellfishing waters.	Assessment of the oyster waters use is made using the TDH Seafood Safety Division *Classification of Shellfish Harvesting Area Maps*. Consistent with the assessment guidance which identifies those areas classified as Restricted by TDH for shellfishing only because of proximity to known sources as a concern, the area near the Arroyo Colorado was removed from the 303(d) List during the 2002 assessment and identified as a concern in both the 2002 and 2004 assessment.