Regional Water Quality Control Board, Central Valley Region
2011 Triennial Review
Response to Comments
Water Quality Control Plan for the
Sacramento River and San Joaquin River Basins

The Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) has provided opportunities for the public to submit written comments on the 2009-2010 Triennial Review. This document contains written responses to comments received pertaining to the Triennial Review of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins.

Written comments were received prior to the 13 August 2009 workshop from:

1. Ms. Kari E. Fisher, Associate Counsel, and Justin E. Fredrickson, Environmental Policy Analyst, California Farm Bureau Federation (1-3)
2. Ms. Debbie Webster, Executive Officer, Central Valley Clean Water Association (4-6)
3. Mr. Jeffrey R. Single, Ph.D., Regional Manager, Department of Fish and Game, Central Region (7)
4. Ms. Melissa A. Thorme, Downey Brand, on behalf of the City of Tracy (8-10)
5. Mr. Matthew Mitchell, United States Environmental Protection Agency, Region IX, (11-19)
6. Ms. Jo Anne Kipps, Fresno, CA (20)
7. Mr. Gordon Plantenga and Mr. Mark Miller, Nevada County Sanitation District No. 1 (21)
8. Mr. Rich Gigliotti, Director, PG&E Land Services, Pacific Gas and Electric Company (22-24)
9. Mr. Stan R. Dean, Director of Policy and Planning, Sacramento Regional County Sanitation District (25-26)
10. Mr. Kenneth Petruzzelli, O'Laughlin & Parris LLP (27-32)
11. Mr. John Herrick, South Delta Water Agency (33-36)
12. Ms. Elaine Archibald, Executive Director, California Urban Water Agencies (37)

The following entities submitted basin planning comments as part of the 2008 Clean Water Act Section 303(d)/305(b) Integrated Report process:

13. Mr. Art O'Brien, City of Roseville (38)
14. Mr. Donald P. Freitas, Contra Costa Clean Water Program (39)
15. Mr. Parry Klassen, East San Joaquin Water Quality Coalition (40)
16. Mr. Jerald James, Madera County (41)
17. Mr. Mike Wackman, San Joaquin County Delta & Water Quality Coalition (42)

18. Ms. Karna E. Harrigfeld, Stockton East Water District (43)

Verbal comments were received during the 13 August 2009 workshop from:

19. Ms. Valerie Kincaid, San Luis & Delta Mendota Water Authority (44-45)
20. Ms. Karna Harrigfeld, Stockton East Water District (46-47)
21. Mr. Ed Cheslak, Pacific Gas & Electric Co. (48)
22. Mr. Steve Bailey, City of Tracy (49)
23. Mr. Ken Petruzelli, San Joaquin River Group (50-53)

The following entity submitted basin planning comments as part of the public review of the draft Basin Plan Amendments to Address Selenium Control in the San Joaquin River Basin:

24. Ms. Susan K. Moore, United State Department of the Interior, Fish and Wildlife Service (54)

Following are the responses to the comments.

<u>Ms. Kari E. Fisher, Associate Counsel, and Justin E. Fredrickson, Environmental Policy Analyst, California Farm Bureau Federation)</u>

1. *Beneficial Use Dedesignations should continue to occur, especially in water ways that are inappropriately designated as MUN. Proper application of appropriate beneficial use designations to water bodies, which may result in numerous dedesignations, must occur.*

   The Regional Board should look to its past policy documents and publications to initiate dialog with stakeholders and other agencies with the goal of developing a planning process to appropriately apply proper beneficial uses to all water bodies. Farm Bureau appreciates the magnitude of this endeavor; however, we believe a well-prioritized process that is enlightened by public input is superior to ad-hoc adjustments driven by State Board Order or judicial mandate.

   In previous Triennial Review Work Plans, the Central Valley Water Board has prioritized issues addressing appropriate beneficial use designations and water bodies dominated by NPDES discharges and agriculture discharges. Staff is proposing that these issues remain a high priority. Issues 2, 3 and 4 (EDWs, ADWs, and Beneficial Use Designations) describe possible approaches to address these concerns. The Central Valley Water Board is interested in exploring approaches that will address more than one water body at a time. Staff is available to meet with interested stakeholders over basin planning concerns.

2. *The Farm Bureau believes that it is essential for the Regional Board to develop a sound policy for effluent dominated water bodies that includes, but is not limited to, agricultural dominated water bodies and agricultural conveyance facilities. The importance of this issue cannot be overstated as, nearly thirty years after first acknowledging that the Basin Plan's beneficial use designations remain uncompleted, there is still no plan or priority process to address this fundamental requirement. The importance and need for an effluent dominated water bodies policy requires development of a self-standing, near-term activity and not as a subset of a potential future irrigated lands program.*

   The 'tributary rule' that currently extends designated beneficial uses in one water body to any water bodies tributary to that water body that lack their own formally designated beneficial uses is overly coarse and unworkable, as a practical matter, simply because it would tend to make upstream dischargers in agricultural dominated water bodies, for example, theoretically liable for one or more unachievable standards that do not, in fact, reflect any actual use that is locally supported by said agricultural dominated water way. Also, because of the practical and logistical difficulty of enforcing or applying the tributary rule to each individual water body, the tributary rule does not in fact accomplish its alleged regulatory purpose of protecting or improving water quality, but does unreasonably and unpredictably expose individual dischargers to undue risks or potential enforcement and excessive compliance costs and even prosecution.

   As an alternative to the tributary rule, the Board can follow established processes to formally designate beneficial uses in an upstream water body or, subtractively, 'dedesignate' specific beneficial uses that would otherwise extend to that water body by virtue of tributary. Such processes, however, have likewise shown themselves to be extremely cumbersome and are, consequently, very nearly unworkable as the tributary rule itself.

   As opposed to rote application of the tributary rule, therefore, or a case-by-case, location-specific designation, dedesignation, or enforcement, a more workable potential approach for the Regional Board's consideration in this Triennial Review might involve a new policy that seeks to reasonably protect broad downstream beneficial uses without impairing more narrowly defined uses above, by more holistically and realistically approaching water quality on a broad watershed basis.

   Staff is proposing that issues addressing water bodies dominated by NPDES discharges and agricultural dominated water bodies remain a high priority. See Issues 2 and 3 for more information. Beneficial use designations and dedesignations must follow federal and state laws and

regulations and are not conducted as part of the Board's permitting activities. The Central Valley Water Board is interested in addressing beneficial use issues in a holistic manner in compliance with federal and state laws and regulations and within financial constraints. Staff is available to meet with stakeholders to explore any feasible options. See Issue No. 4 (Beneficial Use Designations) for more details.

3. *A policy to address and manage salt in the Sacramento River and San Joaquin River Basins is needed. As the Regional Board observes, certain regulatory tools or controls on salinity lie within the Board's jurisdiction, while other aspects which might be required for such a comprehensive management approach, lie outside of the Board's jurisdictional reach. Without a doubt, however, excessive accumulation of salts in Central Valley solids and waters is a serious problem and a long-term, regional threat to the viability of agricultural activities in certain areas of the Central Valley. Accordingly, a concerted long-term effort to address this problem is, in our view, not only desirable, but absolutely necessary. While Farm Bureau readily acknowledges as much, however, we would also draw the Board's attention to its own observation that regulatory Basin Plan elements of comprehensive salinity management plan could potentially "result in more restrictive discharge limits, requirements to conduct costly studies, implementation of treatment measures or projects to manage salt, and potentially prohibition of certain discharges." To integrate parallel efforts and minimize such detrimental impacts of a purely regulatory approach on existing economic uses, therefore, it will be critically important to include proper coordination and integration with all interested and applicable entities and stakeholders, and also to coordinate closely with on-going efforts occurring independently of the Board's jurisdiction, including both salinity management efforts and the potential of new infrastructure to more fundamentally address root causes of the current salt imbalance, particularly on the westside San Joaquin Valley.*

   Staff recommends that holistic salt issues be addressed through the CV-SALTS effort. The Central Valley Water Board welcomes and encourages the participation of all stakeholders in the CV-SALTS effort. See Issue No. 1 (Salt and Nitrate Management) for more details.

<u>Ms. Debbie Webster, Executive Officer, Central Valley Clean Water Association (CVCWA)</u>

4. *In general, CVCWA would support an effort by the Regional Water Board to undertake a comprehensive review of the Basin Plan as a whole. The Basin Plan has not changed significantly since its original inception in 1975. As a result, the Basin Plan is out of date and in many instances no longer relevant. However, CVCWA also understands that the lack of financial resources prevents the Regional Water Board from reviewing the*

Basin Plan in its entirety. In light of the Regional Water Board's limited resources, CVCWA has identified several Tier One priority issues that CVCWA urges the Regional Water Board to address during this triennial review period. We have also identified several Tier Two issues that should be considered should resources allow.

The Central Valley Water Board thanks CVCWA for providing recommendations for Triennial Review Work Plan issues.

5. *Tier One Issues:*

a. *Salt Management Policy: CVCWA commends the Regional Water Board for the progress made in the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) basin planning effort. CVCWA is a founding member of the non-profit Central Valley Salinity Coalition, which is working hand in hand with the Regional Water Board and other stakeholders to develop a comprehensive salt management strategy for the Central Valley. This collaborative effort to develop and implement a comprehensive salinity and nitrate management program must remain a top priority during this triennial review period. Although some of the solutions to the salinity issues in the Central Valley are outside of the Regional Water Board's jurisdiction, the success of the CV-SALTS program hinges on the Regional Water Board's support during this triennial review process to evaluate beneficial uses and water quality objectives in the Basin Plan.*

The Central Valley Water Board thanks CVCWA for participating in the CV-SALTS effort. See Issue No. 1 (Salt and Nitrate Management) for more details.

b. *The water quality objective for chemical constituents incorporates by reference primary and secondary maximum contaminant levels (MCLs), which are drinking water standards adopted by the Department of Health Services. Both apply to drinking water at the tap as it is delivered by drinking water agencies to consumers. Drinking water providers are required to meet primary MCLs; however, the secondary MCLs are recommendations based on consumer acceptance levels and are therefore unrelated to human health and welfare or the protection of aquatic life. For example, the secondary MCL for iron is set at a level to protect laundry from staining. As set forth in the Basin Plan, the secondary MCLs apply directly to the receiving water without considering that filtration (or satisfaction of specific turbidity requirements) is required prior to use by consumers for drinking water. In other words, rivers and streams that are sources of drinking water must meet the same*

levels for some constituents as tap water even though such levels are not related to human or aquatic health. In addition, the same drinking water will be filtered, which will remove the constituent of concern to an acceptable level, prior to being used by consumers. The application of such secondary MCLs to natural waterways is inappropriate when one considers the aesthetic basis for secondary MCLs and the treatment that will occur prior to use by consumers.

In the State Board's recent action on the City of Lodi permit, the adverse unintended consequences of the prospective incorporation by reference of secondary MCLs were evident. Despite the reasonable position taken by the Regional Water Board—that the salinity objectives may be interpreted flexibly for water quality purposes just as the MCLs are applied on a case-by-case basis—the State Water Board found that the low end of the numeric ranges must be applied to discharges. Therefore, the Basin Plan must be amended to delete the secondary MCLs. If there are specific secondary MCLs that the Regional Water Board deems necessary to protect uses of the Region's waterways, the Regional Water Board should adopt water quality objectives for those constituents pursuant to Porter-Cologne. At a minimum, the Regional Water Board should amend the Basin Plan to clarify how secondary MCLs should be applied to receiving waters (i.e. dissolved standards and subject to ranges).

The Central Valley Water Board is also interested in evaluating the use of secondary MCLs as water quality objectives and will include this issue in the Triennial Review Work Plan as Issue No. 11 (Secondary MCLs as Water Quality Objectives).

c. *CVCWA consists of 60 local public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. Many of our member agencies operate wastewater treatment plants that discharge to effluent and agricultural dominated water bodies with inappropriately designated uses. In most instances, inappropriate uses are attributed to these water bodies through the Regional Water Board's broad application of the tributary statement rather than site-specific analyses of appropriate beneficial uses.*

The de-designation of beneficial uses, like designation of beneficial uses, requires a lengthy and resource-intensive use attainability analysis (UAA). De-designations and designations cannot occur effectively in the absence of a clear and efficient process for conducting UAAs. CVCWA commends the Regional Water Board

for de-designating the MUN, COLD, SPWN and MIGR beneficial uses on Old Alamo Creek during the last triennial review period. However, the difficulty and expense of de-designating this effluent dominated water body, despite the State Water Board's acknowledgment in a 2002 Order that beneficial uses were improperly designated, highlights the need for the Regional Water Board to re-examine its policy and practice for addressing de-designations, especially on effluent and agricultural dominated waterbodies.

Further, the Regional Water Board should prioritize reconsideration of the broad application of the tributary rule and the development of a policy for conducting UAAs. The Regional Water Board should work collaboratively with interested parties to develop a process for conducting UAAs. By having a set process in place, UAAs can be more efficient and cost effective for both designating and de-designating beneficial uses.

Beneficial use designations and dedesignations must follow federal and state laws and regulations. However, within the constraints of federal and state laws and regulations, the Central Valley Water Board is interested in developing an efficient process for evaluating beneficial uses and is pleased that CVCWA wishes to help in this effort. Issue No. 4 (Beneficial Use Designations) in the Triennial Review Work Plan includes an initial discussion of this issue and some approaches that might address this issue.

d. *Remove Non-Detect Standard for Organochlorine Pesticides: The pesticide objective for the Sacramento and San Joaquin River Basins includes an objective for chlorinated hydrocarbon pesticides that states that they "shall not be present in the water column at concentrations detectable within the accuracy of analytical methods approved by the Environmental Protection Agency or the Executive Officer." (Basin Plan, III.6.00.) This provision was adopted into the Basin Plan in 1975 and was classified as an interim objective by the Regional Water Board due to a lack of information regarding tolerance levels. (A Review of the Administrative Record for the Central Valley's Water Quality Control Plan 1975-1994, September 2003 (Review), at p. 32.) By classifying the pesticide objective as an interim objective, the Regional Water Board intended to develop specific numeric objectives as part of the triennial review process. (Review at p. 32.) However, such follow-up actions have never occurred. As a result, the objective fluctuates with the accuracy of analytical methods rather than being based on the appropriate level to protect the uses of the waterways of the Sacramento and San*

Joaquin River Basins. Consequently, the non-detect standard should be removed from the Basin Plan.

The Basin Plan does not indicate that this is an interim provision. Regardless of whether the Basin Plan specifies water quality objectives as interim or final, the Central Valley Water Board may revise water quality objectives when it has information that indicates the need to do so. Re-evaluating this water quality objective has been included in Issue No. 7 (Pesticide Control Efforts).

e. *Three Species Chronic Tests: As part of the triennial review, the Regional Water Board should identify the need for a policy that explains how the Regional Water Board intends to interpret three species chronic toxicity tests to determine if the narrative "no toxics in toxic amounts" water quality objective has been violated. Currently, different standards in different permits create confusion and uncertainty amongst the various wastewater agencies throughout the Central Valley.*

The State Water Board is currently evaluating the toxicity control provisions in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). State Water Board adopted water quality control plans supersede Regional Water Board basin plans for the same geographic area (CWC §13170). The Central Valley Water Board will participate in the State Water Board's process. See Issue No. 12 for State Water Board Plans and Policies and Other Statewide Issues that are under development.

6. Tier Two Issues

a. *CVCWA continues to support and commend the Regional Water Board for its stakeholder-based process to develop a Drinking Water Policy for the Central Valley. It is unfortunate that current funding issues will cause unknown delay in the development of a comprehensive, scientifically supportable policy for drinking water. In light of this delay, CVCWA urges the Regional Water Board to re-prioritize the stakeholder-based development of an equitable Drinking Water Policy when funding permits. The Regional Water Board should be certain that any Drinking Water Policy developed now or in the future provides reasonable protection for drinking water while ensuring that out-of-Valley interests that benefit from the policy share in the costs of implementing and complying with the final policy.*

The Central Valley Water Board is committed to developing a comprehensive drinking water policy (Central Valley Water Board

Resolution No. R5-2004-0091 and R5-2010-0079). Certainly, the funding affects the schedule for completing the policy. However, re-prioritizing this issue will not create a better policy. At this time, there is still momentum and institutional knowledge from the stakeholders that continues to support a high priority for this issue. See Issue No. 9 (Policies for Maintaining Water Quality for Drinking Water) for more details on the status of this policy.

b. *CVCWA commends the Regional Water Board for its commitment to stakeholder outreach in devising a groundwater strategy pursuant to Resolution No. R5-2008-0181. The development of a long-term groundwater strategy should remain a high priority in the triennial review process.*

CVCWA encourages the Regional Water Board to work with the State Water Board to develop a comprehensive groundwater strategy. Due to the many stakeholders who use and/or have the potential to impact groundwater, the Regional Water Board and State Water Board need a collaborative process for developing a scientifically sound policy for the Central Valley and the State. CVCWA prefers a sound groundwater policy to the Regional Water Board's current practice of establishing ad hoc policy on a permit-by-permit basis. In the absence of a sound policy, the Regional Water Board could potentially interpret and re-interpret narrative groundwater objectives much in the same way as done for surface water objectives. This process results in the use of de facto numeric water quality objectives that have not been evaluated under Water Code section 13241.

The Central Valley Water Board agrees that a regionwide, if not a statewide policy, on groundwater protection is important. The Central Valley Water Board works closely with the State Water Board on development and implementation of groundwater programs and policies. The Central Valley Water Board also recognizes the importance of groundwater to the stakeholders of the Central Valley and adopted the Groundwater Quality Protection Strategy or "Roadmap" with Resolution No. R5-2010-0095. See Issue No. 14 (Groundwater Survey and Control Policies for Discharges to Groundwater) and the Central Valley Water Board's webpage for Groundwater Quality[1] for more information.

c. *Pesticide Control Program: CVCWA commends the Regional Water Board for considering the adoption of numeric water quality objectives for pesticides instead of continuing to rely solely on the*

[1] Webpage located at:
http://www.waterboards.ca.gov/centralvalley/water_issues/groundwater_quality/index.shtml

narrative objectives currently contained in the Basin Plan. Since wastewater agencies may be directly impacted by the adoption of water quality objectives for pesticides, wastewater agencies must be involved as stakeholders in any pesticide basin planning efforts. CVCWA urges the Regional Water Board to prioritize the adoption of numeric water quality objectives for pesticides—established in compliance with the intent and specific requirements of the California Water Code section 13241—in any pesticide basin planning efforts conducted during this triennial review period.

The Central Valley Water Board has a goal of establishing numeric water quality objectives for pesticides that pose a high risk to surface waters in the Sacramento and San Joaquin River Basins. The public process for amendments to the basin plan has begun. The Central Valley Water Board encourages all stakeholders to participate. Interested persons may subscribe to electronic mailing lists for any of the basin plan amendments through our website at:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg5_subscribe.shtml

Postal mail notifications are also available by contacting the staff person for each amendment. See Issue No. 7 for more information on the Central Valley Water Board pesticide control efforts.

Mr. Jeffrey R. Single, Ph.D., Regional Manager, Department of Fish and Game, Central Region

7. *The Department of Fish and Game stresses the importance for COLD beneficial use to remain in the Basin Plan for many Central Valley streams and also recommends a priority be given to establish a numeric water quality objective for temperature to protect COLD in the upper and lower San Joaquin River.*

Of particular concern in this case is protecting habitat for migrating, spawning, juvenile rearing and outmigrating Chinook salmon and steelhead in the San Joaquin River.

It is imperative the COLD beneficial use designation remains for the San Joaquin River, especially the mainstem above the mouth of the Merced River to Friant Dam. At present, migrating salmonids are excluded from entering the San Joaquin River upstream of the mouth of the Merced River by an artificial barrier. The intentional exclusion is necessary due to the lack of suitable habitat and elevated temperatures in reaches of the upper San Joaquin River. However, that may change in the near future as the Friant Restoration Settlement Parties begin implementing the proposed San Joaquin River Restoration Program. The Program has the

primary goal of restoring naturally reproducing, self-sustaining spring-run and fall-run salmon populations and other native fish (including steelhead) on the river mainstem, upstream of the mouth of the Merced River to Friant Dam. The Program's guidance document is the Draft Fisheries Management Plan: A Framework for Adaptive Management in the San Joaquin River Restoration Program. The Management Plan identifies temperature among the most important manageable factors for salmonid survival.

In order to protect the COLD designation for beneficial uses in the San Joaquin River, a Basin Plan amendment is needed to establish a numeric water quality objective for temperature.

Numeric objectives for temperature should be at least as stringent to protect the most sensitive fish and wildlife resource protected under the COLD designated beneficial use. In this case, the most sensitive to elevated temperatures would be the basin's salmonid fishery. The EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards are expected to be applied to specified reaches of the San Joaquin River and its major tributaries based on salmonid habitat and temperature requirements for each life stage.

We cannot stress enough the importance of establishing protective temperature requirements in advance of the planned restoration of spring-run and fall-run salmon on the upper San Joaquin River; and also improving the existing populations of fall-run Chinook salmon and steelhead in the river's major tributaries. The Department looks forward to partnering with the Regional Board in this endeavor of maintaining water quality standards for salmonids by establishing and applying effective numeric objectives for temperature, implementing a plan to achieve those objectives, and helping to restore this region's valued public trust resources.

The Central Valley Water Board strives to protect the beneficial uses of all the waters in its jurisdiction. Certainly, any amendments to modify the aquatic life or habitat beneficial uses will only occur after consultation with the Department of Fish and Game.

Temperature objectives have been identified in the past as a need for spring-run Chinook salmon and steelhead in the Sacramento River watershed. The Central Valley Water Board is also interested in evaluating temperature objectives to protect salmonid habitat in the San Joaquin River. See Issue No. 10 (Protection of Central Valley Fisheries and other Aquatic Life) in the Triennial Review Work plan for more details.

Ms. Melissa A. Thorme, Downey Brand, on behalf of the City of Tracy

8. *The Regional Water Board should expand its analysis of the best method to measure and assess salinity for protection of beneficial uses in the southern Delta beyond Electrical Conductivity (EC) to include analysis of TDS, "effective" EC (only measuring the relevant EC that may impact agricultural beneficial uses), and/or individual salinity-related constituents, and then determine the most accurate and cost-effective manner to regulate salinity for the benefits of all interested in the southern Delta.*

   Water quality objectives for the EC for the southern Delta need not be overly conservative so as to be unreasonable or unnecessary for adequate protection of the Agricultural Supply beneficial use. Use of EC as the simple measure of salinity should be re-evaluated by the Regional Water Board, and alternative measures, such as TDS, "effective" EC, or more specific salinity compounds (e.g. if individual constituents that comprise EC are more directly relevant to reasonable protection of beneficial uses and allow compliance flexibility), should be investigated and used if more accurate and reasonable regulation will result. If EC is retained as the measure for salinity, new numeric water quality objectives for EC should be adopted based on recent information and studies, to provide for the reasonable protection of the Agricultural Supply beneficial use. The Regional Water Board must comply with Water Code section 13241 and 13242, if incorporating water quality objectives from updates to the State Water Board's Bay-Delta Plan, or adopting new water quality objectives for the southern Delta.

   The south Delta salinity objectives were established by the State Water Board in its Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). The State Water Board is in the process of evaluating southern Delta salinity. The Central Valley Water Board coordinates with the State Water Board on the Bay Delta Plan. Currently, the Central Valley Water Board is working on a regionwide policy called the CVSALTS initiative which will address salts and salt compounds. CVSALTS will also include management plans and may be the appropriate venue to evaluate use of EC as the measure of salinity. See Issue No. 1 (Salt and Nitrate Management) for more details.

   In addition, staff is working on strategies that would provide interim regulatory solutions for dischargers adversely affected by salinity regulation while the CV-SALTS initiative is under development.

9. *The Basin Plan incorporates by reference the numeric water quality objectives for EC for the protection of agricultural beneficial uses from the 1991 Bay-Delta Plan. The Regional Water Board did not include a prospective incorporation by reference of any future modifications to water*

quality objectives from the Bay-Delta Plan. The 1991 (and 1995) Bay-Delta Plan applied numeric EC objectives at four locations in the Delta and implementation of those objectives was to occur via regulation of water flow by federal and state agencies controlling Delta water flows and best management practices and waste discharge requirements for non-point source dischargers. See 1991 Bay-Delta Plan at Table 1-1, pgs. 2-2 and 7-5. Without appropriate analysis, the 2006 Bay-Delta Plan suddenly applied the numeric objectives to all waterways within the southern Delta, and implementation was expanded to include restrictions on municipal discharges to the southern Delta. These changes have not been incorporated into the Regional Water Board's Basin Plan.

As such, only the four compliance points currently referenced in the Basin Plan can be used for impairment determinations for the southern Delta and for reasonable potential determination prior to NPDES permitting decisions. It is the City's understanding from staff at the State Water Board that purported "non-substantive" modifications to the 2006 Bay-Delta Plan's water quality objectives for EC have not yet been approved by the U.S. EPA, and therefore, cannot be used as "applicable water quality standards" for Clean Water Act/NPDES permitting purposes. Under federal case law and federal regulations, state water quality standards adopted after May 30, 2000 are not valid under federal law until explicitly approved by U.S. EPA. See 40 C.F.R. §131.2(c)(2).

If the Regional Water Board wants to incorporate into its Basin Plan the not-yet effective and inadequate 2006 modifications to the Bay-Delta Plan, the Regional Water Board must first undertake analysis in compliance with Water Code section 13241 (analyzing whether expansion of the objectives, both geographically and to the specified types of discharges, is appropriate), and amend the Basin Plan's implementation plan for EC to incorporate a plan for relevant and affected municipal dischargers, including the City. Prior to implementation, the revised water quality objectives for EC would need to be approved by the U.S. EPA. None of these activities has yet occurred; therefore, the Regional Water Board cannot yet impose the EC objectives from the 2006 Bay-Delta Plan. The same analysis and compliance with Water Code sections 13240-13247 is required for any new water quality objective(s) for EC that the Regional Water Board may adopt in lieu of applying the 2006 Bay-Delta Plan water quality objectives for EC.

In accordance with California Water Code section 13170, water quality control plans adopted by the State Water Board supersede Regional Water Board basin plans for the same geographic area. No formal action is required on the part of the Central Valley Water Board to amend its Basin Plan in order for the most current Bay-Delta Plan to take effect. Nevertheless, the Central Valley Water Board adopted non-regulatory

amendments in 2009 to update various parts of the Basin Plan including the reference to the State Water Board 2006 Bay-Delta Plan.

The USEPA formally approved the Bay-Delta Plan standards on 26 September 1995. The 2006 Bay-Delta Plan was adopted by the State Water Board in Resolution No. 2006-0098, in which the State Water Board found that there were no substantive amendments to any water quality standards. Therefore, USEPA approval of the 2006 Bay-Delta Plan was not required. The 2006 Bay-Delta Plan went into effect upon approval by the Office of Administrative Law which occurred on 27 June 2007.

10. *The Regional Water Board's Basin Plan does not contain an implementation plan describing how water quality objectives for EC incorporated by reference from the Bay-Delta Plan are to be implemented in relation to municipal wastewater discharges. This lack of a comprehensive implementation plan violates Water Code section 13242 and should be identified as a priority project as a result of this Triennial Review process. It is imperative that the Regional Water Board provide a comprehensive implementation plan for salinity that specifically addresses feasible steps for municipal wastewater dischargers to take to achieve compliance.*

The Bay-Delta Plan includes any necessary implementation programs. The Central Valley Water Board's Basin Plan is not required to include an implementation program for the Bay-Delta Plan. However, the Central Valley Water Board is free to develop implementation programs for waste discharges in the Delta, subject to State Water Board approval. This concern is discussed further in Issue No. 1 (Salt and Nitrate Management).

<u>Mr. Matthew Mitchell, United States Environmental Protection Agency, Region IX</u>

11. *The issue to "Develop Temperature Criteria to Protect Chinook Salmon and Central Valley Steelhead" should continue to be identified as a high priority in the upcoming Work Plan. The Bay-Delta Water Quality Control Plan (State Water Resources Control Board, 1995) sets a narrative objective of doubling of natural production of Chinook salmon and endorses a basin-wide approach to achieving this objective. Any work undertaken by the Regional Board on temperature criteria should be conducted in the context of the Bay-Delta Plan narrative objective and plans and activities to support this objective.*

In 2003, EPA Region 10 issued regional guidance for developing numeric temperature standards for the Pacific Northwest to protect cold water (salmonid) beneficial uses. This guidance was endorsed by both NOAA Fisheries and the U.S. Fish and Wildlife Service (FWS). While EPA

Region 9 has not adopted similar guidance, we generally support the scientific approach proposed in this guidance, which recognizes factors of biology, life stage/timing, and the natural thermal patterns. We are interested in discussing the merits of this approach with the Central Valley Regional Board technical staff and the appropriate offices of NOAA and FWS during this triennial review.

The Central Valley Water Board also believes temperature objectives protective of salmonids are important. Staff will consult with EPA, NOAA Fisheries and US Fish and Wildlife Service on any amendments to the Basin Plan affecting salmonids. See Response to Comment No. 7 and Triennial Review Work Plan Issue No. 10 (Protection of Central Valley Fisheries and other Aquatic Life).

12. *EPA would like to see the two outstanding disapprovals from the May 26, 2000 action resolved. The tributary rule and Delta DO disapprovals remain outstanding.*

    a. *On September 6, 2002, the Regional board adopted an amendment that would have resolved the tributary rule disapproval by clarifying the Regional Board's use designation process; however, that amendment was withdrawn from State Board consideration in 2003 and, therefore, has never been submitted to EPA for approval. We strongly encourage the Regional Board to complete the process of resolving this disapproval.*

    The Executive Officer withdrew the amendment addressing the tributary rule pending the resolution of ongoing litigation. The Central Valley Water Board will consider this amendment when the litigation is settled.

    b. *EPA and Regional Board staff have discussed options for resolving the Delta DO disapproval. That disapproval could be resolved by deleting the exemption from DO objectives that is currently in the Basin Plan for Delta water bodies "which are constructed for special purposes and from which fish have been excluded or where the fishery is not important as a beneficial use." To our knowledge, no such waters have been identified.*

    The Central Valley Water Board staff agrees that no water bodies have been identified which are constructed for special purposes and from which fish have been excluded or where the fishery is not important as a beneficial use. Re-evaluation of the dissolved oxygen objectives has been included in Triennial Review Work Plan Issue No. 10 (Protection of Central Valley Fisheries and Other Aquatic Life).

13. *In EPA's May 24, 2000 action on the 1996 "Grassland amendments" to the Basin Plan, we reserved action on the omission of REC-1 and REC-2 uses for the Grassland wetland water supply channels, pending the Regional Board's submission of additional information from the administrative record to justify this omission, consistent with the requirements of 40 CFR 131.10(j). Since then, Regional Board staff have informed us that a search of the administrative record did not yield the necessary information. "Recreation in and on the water" are goal uses identified in section 101(a)(2) of the Clean Water Act (CWA). Federal regulations at 40 CFR 131.20(a) require States to reexamine, every three years, any water bodies for which goal uses of the CWA have not been designated to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State must revise its standards accordingly. During the upcoming triennial review, the Regional board should either submit the necessary information to EPA to justify omission of the REC-1 and REC-2 uses or amend the Basin Plan to designate these uses for the Grassland wetland water supply channels.*

    The Central Valley Water Board considers beneficial use designations as a high priority. The evaluation of REC-1 and REC-2 beneficial uses in the Grassland wetland water supply channels has been included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations).

14. *We support the current stakeholder group which is currently working with the Regional Board to establish a Delta methylmercury TMDL and supporting Basin Plan amendment which would include methylmercury fish tissue objectives. However, if the TMDL and water quality objectives are not adopted by the time the triennial review Workplan is scheduled to be adopted, we recommend that the Regional Board adopt the draft methylmercury fish tissue objectives as soon as possible.*

    On 22 April 2010, the Central Valley Water Board adopted methylmercury fish tissue objectives for the Delta as part of the Delta Mercury Control Program in Resolution No. R5-2010-0043. In addition, the State Water Board is working on statewide fish tissue objectives for methylmercury.

15. *On August 24, 2007, EPA completed a Reasonable and Prudent Measures (RPM) required by the California Toxics Rule (CTR) Biological Opinion after consultation with the FWS and NOAA Fisheries. The RPM required us to determine appropriate pentachlorophenol (PCP) water quality criteria for waters in which early life stages of salmonids were present, and further, under conditions of low DO and high temperatures. As a result of the RPM, EPA determined that Site Specific Criteria (SSC) should be adopted for waters in CA where early life stages (ELSs) of salmonids are present, and a lower SSC where they may be under*

conditions of low DO and high temperatures. EPA promulgated freshwater chronic criteria for PCP of 15 ug/l in the CTR for all inland surface waters. EPA is now in agreement with FWS and NOAA Fisheries that more stringent SSC should be adopted in waters containing ELSs of salmonids: 10 ug/l where ELSs of salmonids are present and 5 ug/l in those waters that also have low DO and high temperatures. We recommend that the Regional Board identifies freshwaters in which ELSs of salmonids may be present and includes the updated freshwater PCP criteria for those waters.

The Central Valley Water Board considers peer reviewed science and criteria for the protection of all life stages of all aquatic life and thanks the USEPA for providing the most recent criteria for pentachlorophenol. Review of pentachlorophenol has been included in Triennial Review Work Plan Issue No. 13 (Current USEPA Criteria). However, it should be noted that most water bodies with ELS salmonids are also protected by the municipal and domestic supply (MUN) beneficial use. The CTR criterion for human health consumption of water and organisms is 0.28 ug/l.

16. *The Regional Board should accelerate its efforts to identify and implement controls necessary to reduce selenium loading to Mendota Pool. In listing Mendota Pool as impaired by selenium, the Regional and State Boards noted that the Delta-Mendota Canal is likely a primary contributor of selenium to the Pool. While the Pool is subject to the Basin Plan's site specific selenium objective of 2 ppb monthly mean, the Canal was evaluated for impairment against the CTR criterion of 5 ppb as a 4-day average. We also recommend the Regional Board consider whether a more protective objective should be applied to the Canal in order to protect the downstream uses in Mendota Pool.*

Water quality objectives for selenium have not been established for the Mendota Pool or the Delta Mendota Canal. Therefore, the CTR criterion of 5 ppb as a 4-day average applies to the Pool as well as the Delta Mendota Canal. Any evaluation of selenium impairments for the Mendota Pool using a selenium criterion of 2 ppb as a monthly mean would be incorrect. Any previous listing errors will be corrected in future listing cycles.

17. *Development of policies for maintaining water quality for drinking water was identified as a high priority in the Regional Board's 2005 Workplan, and in the interim a number of excellent reports have advanced this important subject. The Regional Board should continue its work on development of a Central Valley drinking water policy as a high priority.*

The Central Valley Water Board appreciates your comments. See response to Comment No. 6.a. and Triennial Review Work Plan Issue No.

9 (Policies for Maintaining Water Quality for Drinking Water) for more details.

18. *The Regional Board has several TMDLs under development, and many more awaiting initiation. TMDLs may require revision to beneficial uses, water quality objectives, or policies on implementation, but resources are not currently available to complete this work. We recognize that resources are limited, and encourage the Regional Board to consider options for re-allocating resources, as needed, to ensure appropriate basin planning follow-through on TMDLs.*

The Central Valley Water Board agrees that completing TMDLs and the basin plan amendments necessary to implement the TMDLs is important. Dedicated funding for TMDL development and implementation is available. However, the resources needed to address all the water bodies listed as impaired far exceed the available funding. The lack of resources affects all Water Board programs making it difficult to redirect more resources to this particular program. Consistent with the Water Board Strategic Plan (State Water Board Resolution No. 2008-0063), staff continues to explore procedures to more efficiently complete and process TMDLs. For example, staff from multiple water boards are working together to address methylmercury impairments from a statewide perspective. See Issue No. 12 (State Water Board Plans and Policies and Other Statewide Issues) for more information.

19. *We also recommend that you use this time to coordinate with Regional Board NPDES staff to ensure that the Workplan continues to include as high priority any Basin Plan activity necessary to support issuance or reissuance of NPDES permit. For example, the 2005 Workplan did a good job summarizing high priority beneficial use designations, many of which would have an impact on NPDES permit issuance. We recommend that you continue to work with Regional Board NPDES staff to see if any new Basin Plan activities may be needed and to ensure that existing high priority Basin Plan activities are carried out.*

The planning staff regularly coordinates with the permitting staff as well as staff from other Water Board programs to identify and address planning issues. The Triennial Review Work Plan Issue Nos. 2, 4 and 11 (EDWs, Beneficial Use Designations and Secondary MCLs) provide work plans to address concerns expressed by NPDES permit stakeholders.

<u>Ms. Jo Anne Kipps, Fresno, CA</u>

20. *The Basin Plan should be amended to delete the Guidelines for the Land Disposal of Stillage Waste from Wineries due to their ineffectiveness in*

protecting the beneficial uses of groundwater underlying stillage disposal operations.

If the guidelines are revised, then the revised guidelines should be based on studies to determine the appropriate application rates to prevent water quality degradation. These studies should evaluate loading rates based on soil type or quality of winery wastewater.

The Board is involved in a comprehensive effort called the CVSALTS initiative to address salinity and nitrate problems in the Central Valley and adopt long-term solutions that will lead to enhanced water quality and economic stability. Food processing wastes are one of the categories that will be evaluated in the CVSALTS initiative. Specific evaluation of winery waste guidelines will be included in Triennial Review Work Plan Issue No. 1 (Salt and Nitrate Management).

Mr. Gordon Plantenga and Mr. Mark Miller, Nevada County Sanitation District No. 1

21. *Addressing beneficial use issues and development of regulatory guidance to address water bodies dominated by NPDES discharges should be high priorities.*

The Central Valley Water Board agrees that these issues should be high priorities. See Triennial Review Work Plan Issue Nos. 2 and 4 (EDWs and Beneficial Use Designations) for more details.

Mr. Rich Gigliotti, Director, PG&E Land Services, Pacific Gas and Electric Company

22. *The Basin Plan would be more effective if it identified beneficial use designations for separate water body segments or individual reaches within longer rivers, and particularly for water bodies with large changes in elevation, species assemblages, and other characteristics.*

The Central Valley Water Board agrees that long water body reaches often do not have the same characteristics from its head waters to its outflow due to changes in elevation, riparian vegetation cover, climate, etc. The Board is committed to addressing beneficial use issues. See Triennial Review Work Plan Issues No. 4 (Beneficial Use Designations) and No. 10 (Protection of Central Valley Fisheries and other Aquatic Life) for more details. The Board looks forward to working with PG&E to address these concerns.

23. The Basin Plan manages any water bodies with both COLD and WARM beneficial use designations as COLD water bodies for the application of

water quality objectives. The most current data associated with both COLD and WARM designations suggest that a new designation for a transitional zone may be most appropriate in this situation. This new designation would be applied to a designated segment or reach. Application of COLD water objectives can have unintended consequences if special status warm water species occur within a water body that has both designations. Such an approach would ensure proper protection for all reaches of a watershed.

The Central Valley Water Board agrees that water bodies with both COLD and WARM beneficial use designations often have a transitional zone where optimum habitat conditions are not represented by water quality objectives for either the COLD or WARM beneficial uses. See Triennial Review Work Plan Issues No. 4 (Beneficial Use Designations) and No. 10 (Protection of Central Valley Fisheries and other Aquatic Life) for more details. The Board looks forward to working with PG&E to address these concerns.

24. *PG&E is particularly interested in the beneficial uses of the following water bodies:*

(1) Upper North Fork Feather River from Lake Almanor to Lake Oroville
(2) Pit River
(3) South Yuba River between Lake Spaulding and Englebright Reservoir
(4) Willow Creek in Madera County

These water body segments have been included for evaluation in Triennial Review Work Plan Issue Nos. 4 (Beneficial use Designations).

<u>Mr. Stan R. Dean, Director of Policy and Planning, Sacramento Regional County Sanitation District</u>

25. *The following priority issues should be addressed before the next triennial review:*

a. Salt Management Policy
b. Drinking Water Policy
c. Ammonia & Chlorine Objectives
d. Pesticide Control Program
e. Remove Incorporation by Reference of Secondary Maximum Contaminant Levels
f. Remove Non-Detect Standard for Organochlorine Pesticides
g. Three Species Chronic Test

The Central Valley Water Board appreciates the assistance from the Sacramento Regional County Sanitation District in prioritizing the basin planning issues. See Triennial Review Work Plan Issue Nos. 1, 9, 12, 13, 7, and 11 (Salt and Nitrate Management, Policies for Maintaining Water Quality for Drinking Water, Participation in State Water Board Plans and Policies, Current USEPA Criteria, Pesticide Control Efforts, and Secondary MCLs as Water Quality Objectives) for more details regarding salt management, drinking water, ammonia and chlorine objectives, toxicity control provisions for the SIP, pesticide control programs and the secondary maximum contaminant levels. Also, please see responses to Comment Nos. 5 and 6.

26. *The Regional Water Board should adopt bacteria objectives that are based on appropriate indicators such as fecal coliform, enterococcus or e. coli. The Regional Water Board should also adopt a plan for the implementation of the bacteria objectives that properly guides staff on the linkage between adopted water quality objectives and water quality based effluent limitations.*

The State Water Board has initiated a process to revise bacterial standards for water contact recreation in fresh waters in California. State Water Board adopted water quality control plans supersede Regional Water Board basin plans for the same geographic area (CWC §13170). The Central Valley Water Board will participate in the State Water Board's process. See Triennial Review Work Plan Issue No. 12 for more information on the State Water Board's plans and policies and other statewide issues.

Mr. Kenneth Petruzzelli, O'Laughlin & Parris LLP

27. The most important issues for the Board to address are Beneficial Use Designations and Effluent and Agriculture Dominated Water Bodies.

The Central Valley Water Board should solicit information to compile a list of water bodies falling under exceptions 2a and 2b in the Sources of Drinking Water Policy.

The Central Valley Water Board agrees that addressing beneficial use designations and developing policies to address concerns with effluent and agriculture dominated water bodies are a priority. Suggested procedures for moving forward on these issues will be included in the Work Plan. See Triennial Review Work Plan Issue Nos. 2, 3 and 4 (EDWs, ADWs and Beneficial Use Designations) for more details.

28. *The Central Valley Water Board must impose discharge controls on in-Delta discharges of salts by agricultural, domestic, and municipal dischargers as required by the 2006 Bay-Delta Plan.*

The Central Valley Water Board includes basin plan objectives from both the Basin Plan and the Bay-Delta Plan in waste discharge requirements, including NPDES permits, for dischargers in the Delta.

29. *The Chemical Constituents objective contained in the Basin Plan currently incorporates primary and secondary maximum contaminant levels (MCLs) by reference for application to MUN-designated surface waters. However, Secondary MCLs apply to water provided to the public by community water systems where a community water system is a public water system serving at least 15 service connections of 25 individuals daily at least 60 days out of the year. Also, since Secondary MCLs apply to water provided to the public, they apply at the tap and not the source.*

The prospective incorporation by reference and includes future changes to be added to the Basin Plan without consideration of the required factors in Water Code section 13241. The Central Valley Regional Board may consider amending the Basin Plan language to incorporate only MCLs adopted as of a date specified and then update the language in future Basin Plan amendments.

See response to Comment No. 5.b.

30. *The reference to the Bay-Delta Plan should remove the year and reference the Bay-Delta Plan as the "current" edition.*

This recommendation will be considered in a future basin plan amendment to update the language of the Basin Plan. In addition, Water Board staff are discussing the most efficient procedure for consistent referencing of State Water Board plans and policies in regional water board basin plans.

31. *The Basin plan designates water bodies with potential beneficial uses. "Potential" uses are not defined in federal or state regulations, the Basin Plan or any state plan or policy. For clarification, the Central Valley Water Board should define what a "potential beneficial use" is.*

The Clean Water Act requires states to adopt water quality standards and water quality standards are made up of the designated uses and the criteria to protect the uses. "Potential" and "Existing" uses identified in the Basin Plan are designated uses as defined in 40 CFR §131.3(f). Designated uses may be dedesignated after undergoing the processes specified in federal and state laws and regulations. Other regional water board basin plans also use the terms "Potential" and "Existing." Water

Board staff are discussing these terms and their definitions. Addressing the term "potential beneficial uses" can be considered in a future basin plan amendment.

32. *The Basin Plan uses the term "natural receiving water temperature" without defining it. The term is defined in the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California (Thermal Plan). While the Thermal Plan applies to coastal and interstate waters and to enclosed bays and estuaries, the State Water Board has used the Thermal Plan definition for intrastate waters in water quality orders. When an agency uses an identical term that has a specific definition in similar regulations, the use of the term is presumed to have the same meaning. Consequently, the definition of natural receiving water temperature for the Temperature Objective for intrastate waters is the same as that in the Thermal Plan. For clarification, the CVRWQCB should therefore either include the definitions of natural receiving water temperature, elevated temperature waste, and thermal waste in the Basin Plan or adopt the definitions by referencing the Thermal Plan.*

In State Water Board Order No. WQ2002-0015, the State Water Board states that "Natural receiving water temperature" is defined in the State Water Board's Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (1975) (Thermal Plan). It means "[t]he temperature of the receiving water at locations, depths, and times which represent conditions unaffected by any elevated temperature waste discharge or irrigation return waters."

The recommendation to define "natural receiving water temperature" in the Basin Plan will be considered in a future basin plan amendment to update the language of the Basin Plan.

<u>Mr. John Herrick, South Delta Water Agency</u>

33. *The Central Valley Water Board should promptly adopt and implement salinity standards for the San Joaquin River above Vernalis as instructed by the State Water Board. Although various upstream efforts by water districts have apparently decreased the load of salt in the river during some times, the concentration problems remain. Regional Board efforts to date have placed no time line on actually addressing the salinity problem, only deter action or enforcement. It is clear that the salt problem derives from the surface and subsurface drainage from CVP service area on the west side of the valley. The only possible solutions to the salinity problem are (i) removal of salts from discharges, (ii) cessation of discharges, or (iii)*

dilution of the concentrations. The Basin Plan should recognize these limited options and move forward to require action on the appropriate one or ones.

The Central Valley Water Board continues to work on salinity objectives for the San Joaquin River above Vernalis. Recently, in order to provide more coordination, this work has been incorporated into the CV-SALTS effort. Salinity issues in the Central Valley are expected to be addressed by the CV-SALTS effort. See Triennial Review Work Plan Issue No. 1 (Salt and Nitrate Management) for more details.

34. *The Basin plan must address the issue of minimum flows on the San Joaquin. Current DFG modeling, as well as current NMFS and USFWS Biological Opinions indicate that additional flows are needed in order to preserve endangered and threatened species.*

Flow objectives are part of water rights. Therefore, the State Water Board is responsible for determining minimum flows if appropriate.

35. *The Basin Plan should reaffirm both federal and state anti-degradation laws. There are ongoing efforts to relax such protections to the detriment of beneficial uses. The Regional Board should take note of recent reports which indicate that salinity may likely affect fish, by creating false gradients which impair the normal migrations.*

The Central Valley Water Board implements anti-degradation consistent with state and federal regulations found in State Water Board Resolution No. 68-16 and 40 CFR 131.12, respectively. The Basin Plan recognizes both sets of regulations on Page IV-8.00.

36. *"Finally, our comments to the various TMDL processes are herein incorporated."*

This response to comments includes basin planning comments submitted as part of the 2008 Clean Water Act Section 303(d)/305(b) Integrated Report process. None of the comments submitted by the South Delta Water Agency were identified as basin planning comments.

<u>Ms. Elaine Archibald, Executive Director, California Urban Water Agencies</u>

37. *The Central Valley Drinking Water Policy should continue to be listed as a high priority item in the Triennial Review Work Plan.*

The Central Valley Water Board appreciates the assistance from the California Urban Water Agencies in prioritizing the basin planning issues. See Triennial Review Work Plan Issue No. 9 (Policies for Maintaining

Water Quality for Drinking Water) for more details drinking water policy development.

Mr. Art O'Brien, City of Roseville

38. *Pleasant Grove Creek should be designated WARM rather than COLD. The Regional Water Board staff should reconsider the appropriateness of listing the upper Pleasant Grove Creek for dissolved oxygen. The current dissolved oxygen standard applicable to Pleasant Grove Creek was assigned, in part, based on the Basin Plan's "tributary statement," which designated the COLD beneficial use year-round. Based on the fact that upper Pleasant Grove Creek is a valley floor water body that is seasonally low-flow and ephemeral in nature, and supports abundant plant and animal communities, it is highly unlikely that a substantial change in the frequency with which this reach experiences dissolved oxygen levels below 7 mg/l could be affected by reasonable, implementable load restrictions placed on nutrients or other constituents/parameters affecting reach dissolved oxygen levels. If natural factors are the primary reason why the dissolved oxygen levels in the upper reach of Pleasant Grove Creek fall below 7 mg/l for a portion of the day during the late spring through fall period, annually, then 303(d) listing the water body reach and conducting a TMDL will not meaningfully change the situation.*

    Pleasant Grove Creek will be included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations) as a water body that should have its beneficial uses reviewed.

Mr. Donald P. Freitas, Contra Costa Clean Water Program

39. *The Kellogg Creek (tributary to Clifton Court Forebay, Contra Costa County; partly in Delta Waterways, central and western portion) listing for unknown toxicity and sediment toxicity appears to be based on the beneficial use designation of Cold Freshwater Habitat. The Cold Freshwater Habitat beneficial use is not appropriate and the Warm Freshwater Habitat is more appropriate for the downstream portions of the creek where the samples were taken (Kellogg Creek at Highway 4 and along Hoffman Lane).*

    Kellogg Creek will be included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations) as a water body that should have its beneficial uses reviewed.

Mr. Parry Klassen, East San Joaquin Water Quality Coalition

40. *Based on the [Sacramento River/San Joaquin River Basin Plan], the tributary rule applies beneficial uses of the San Joaquin River to upstream water bodies that do not have listed beneficial uses. This has resulted in many water bodies within the ESJWQC region being listed on the 303(d) list. If these water bodies are listed based on beneficial uses applied due to the tributary rule, the result will be the implementation of a costly TMDL aimed to protect unattainable and sometimes conflicting beneficial uses. Resolution 2005-0050, Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options, states that a water body may be de-listed if "incompatible uses exist" which is clearly the case for many of the agricultural drains which have been assigned municipal drinking water beneficial uses. It is the opinion of the ESJWQC that the State and Regional Boards should prioritize the evaluation of beneficial uses during the next tri-annual San Joaquin Basin Plan amendment (2009) review.*

The ESJWQC is aware of similar situations where beneficial uses have been contested by entities within the Tulare [Lake] Basin Plan area during the associated Basin Plan amendment process. The entities that supplied documentation regarding inappropriate beneficial use designations were told that there are insufficient funds to review those documents. The ESJWQC would like to take this opportunity to remind the State and Regional Boards of the importance of reviewing and updating beneficial uses. Due to the influx of obtainable water quality information through programs such as the ILRP, data are now available for water bodies that previously had little or no water quality information. As such, many of the water bodies within agricultural areas have not been assigned appropriate beneficial uses and it is apparent that the current listings of recreation and drinking water are unrealistic and incompatible with the current hydrology and land use of those areas. This problem is more widespread than the ESJWQC region and the Coalition hopes that the State and Regional Boards realize the importance of committing resources to thoroughly review and update currently assigned beneficial uses.

The Central Valley Water Board agrees that addressing beneficial uses should be high priorities. See Triennial Review Work Plan Issue Nos. 3 and 4 (ADWs and Beneficial Use Designations) for more details.

Mr. Jerald James, Madera County

41. *The Fresno River above Hensley Reservoir should be designated WARM rather than COLD.*

The Fresno River above Hensley Reservoir will be included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations) as a water body that should have its beneficial uses reviewed.

Mr. Mike Wackman, San Joaquin County Delta & Water Quality Coalition

42. *Beneficial uses have been inappropriately applied to water bodies upstream of the San Joaquin River using the tributary rule, which resulted in may of the proposed listings. The State and Regional Boards should prioritize the evaluation of beneficial uses during the next tri-annual San Joaquin Basin Plan amendment (2009) review.*

The Central Valley Water Board agrees that addressing beneficial uses should be high priorities. See Triennial Review Work Plan Issue Nos. 4 (Beneficial Use Designations) for more details.

Ms. Karna E. Harrigfeld, Stockton East Water District

43. *The Calaveras River is a highly managed basin. During the 1950s, the City of Stockton was flooded and many lives were lost and millions of dollars of damage was suffered. As a result of the floods, the Army Corps of Engineers constructed levees that could hold 12,500 cfs of flood water, re-routed Mormon Slough around the City with the construction of the Stockton Diverting Canal, and all winter time flows in the Old Calaveras River Channel were eliminated. The only time the Old Calaveras River Channel has water in it is during the irrigation season, when the District opens the Old Calaveras Headworks Facility. There are no fish present in the Old Calaveras River channel, and therefore, the designation of it as a "cold water" fishery is inappropriate.*

The Calaveras River will be included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations) as a water body that should have its beneficial uses reviewed.

Ms. Valerie Kincaid, San Luis & Delta Mendota Water Authority

44. *The triennial review should be coordinated with the State Water Board periodic review of the Bay-Delta Plan. Recently the State Board adopted a staff report and it deferred the issues of ammonia and toxics to the Regional Board. And the Authority would like to ensure that the process, the triennial review process, takes that into consideration, and the process coordinates and complements the State Board process.*

Staff consults with State Board staff on triennial review issues that overlap statewide planning activities including the Bay-Delta Plan. Regional Board planning activities described in the Triennial Review work plan are

generally coordinated with statewide planning priorities at the time the work plan is considered. The State Water Board staff with the San Francisco and Central Valley Water Board staff have formed a team to improve coordination of Water Boards' activities in the San Francisco Bay and Sacramento-San Joaquin Delta. More information is included in Triennial Review Work Plan Issue No. 5 (Delta Issues).

45. *The Authority would like to note that there are ongoing Basin Plan amendments and we hope that the current triennial review does not slow down or otherwise impact the moving forward of those Basin Plan amendments. So I guess the idea is to adopt comprehensive, coordinated, feasible objectives.*

The Triennial Review is a prioritization activity conducted with resources that are different than most of the resources used to conduct basin plan amendments and Triennial Review staff is generally different than the staff assigned to basin plan amendments. Therefore, ongoing basin plan amendments are not affected by the Triennial Review.

Ms. Karna Herrigfeld, Stockton East Water District

46. *The reach of the Calaveras River from below the weir up to New Hogan Dam is an 18 mile reach where there is water flowing, rainbow trout, beautiful habitat. From below the weir down to what is referenced as the Stockton Diverting Canal; that is reach two. That is a dry area. Water only flows in it when we are irrigating. There is an additional reach from the Stockton Diverting Canal to the San Joaquin River. The way that it is listed in the Basin Plan it says that cold water and spawning apply to the entire Calaveras River. So what we are requesting as a high priority issue is the redesignation of the beneficial use for the lower portions from the San Joaquin River to the Stockton Diverting Canal and from the Stockton Diverting Canal to below the weir, to have the beneficial uses for cold water and spawning removed. We recognize that that could potentially be a migration route, so we are not requesting that migration be eliminated.*

See response to Comment No. 43.

47. *Stockton East believes that there is sufficient evidence to add to the DO water quality objectives a specific objective for the Stanislaus River. Currently we have specific DO objectives for the Sacramento, Feather, Tuolumne and the Merced. And, as you know, the three main tributaries on the San Joaquin River are the Merced, the Tuolumne and the Stanislaus. Over the course of the past 15 years or more, stakeholders on the river have done an incredible amount of work on monitoring. And we have developed a whole host of information, and so it is our opinion that we would like to see a dissolved oxygen objectives specifically set forth for*

the Stanislaus River and that it apply from Orange Blossom Bridge up to Goodwin, which is right below New Hogan and Tulloch Dam. So it is the major stretch where fishery resides during the time in which DO is an issue on the Stanislaus River.

Dissolved oxygen water quality objectives will be included in the Triennial Review Work Plan Issue No. 10 (Protection of Central Valley Fisheries and Other Aquatic Life).

Mr. Ed Cheslak, Pacific Gas & Electric Co.

48. *Many of the beneficial use designations that are utilized in the Basin Plan were developed based upon then current information. More recent data indicates that historic designations in some of the surface water bodies in the Basin Plan may not be appropriate for all of the reaches within those water bodies. You heard similar testimony just a little bit ago. Because much better information about these water bodies is now available, as well as much better understanding through the three decades of experience and definitions and applications of some of these beneficial uses should be reevaluated and updated. It would be more effective to identify beneficial use designations for separate water body segments or individual reaches. Especially within long rivers that are 10 to 15 miles in total length. In particular for water bodies with large changes in elevation or species assemblages or other characteristics which would yield nice discrete segments.*

The current Basin Plan manages all water bodies with cold and warm beneficial use designations as cold water bodies for the application of water quality objectives. This approach can result in some unintended consequences, such as protection of protected species. The most current data associated with cold and water designation suggests that a new designation for a transitional zone may be appropriate for these kinds of mixed classifications. This new designation can be applied to specific segments of reaches and such an approach would ensure protection for all beneficial uses of that water body, such as cold, warm and transitional zones.

So we at PG&E recommend a collaborative review of the surface water body definitions and beneficial use designations for each of the water bodies of concern, and we have identified some of those water bodies in our letter to you to determine whether the current designations are appropriate. Where appropriate we ask that you redefine those water body definitions through segmentation and take into account the assemblages and elevations we mentioned. This analysis will ensure that water bodies are managed the best possible water to protection of the beneficial uses.

See response to Comment Nos. 22 and 23.

Mr. Steve Bailey, City of Tracy

49. *The Regional Water Quality Control Board should comply with Water Codes sections 13241 and 13242 when incorporating water quality objectives from updates to the State Water Board's Bay-Delta Plan when adopting new water quality objectives for the southern Delta.*

In 2006, the State Water Board, without supporting environmental analysis or analysis under Water Code section 13241 and in the guise of non-substantive modifications, extended the applicability of the previously adopted water quality objectives for EC at Vernalis throughout the entire southern Delta. The Bay-Delta Plan's implementation was not modified to include municipal dischargers as an entity required to take actions necessary to achieve the objectives, it did not describe appropriate action, and it did not include a time schedule for such actions. All of these are required by Water Code section 13242.

And the USEPA has not yet approved the 2006 modification for the Bay-Delta Plan. Until the 2006 modification is approved by the USEPA, it cannot be properly used for 303(d) listing decisions of NPDES permitting decisions. Water quality objectives for the EC in the southern Delta need not be so overly conservative so as to be unreasonable to unnecessary for adequate protection of agricultural beneficial uses. Time of year salinity objectives should be examined as well as alternative measurements, such as TDS, effective EC or more specific salinity compound such as the specific ions.

It is imperative that the Regional Water Quality Control Board provide a comprehensive implementation plan for salinity that specifically addresses feasible steps for municipal dischargers to take to achieve compliance.

See response to Comments No. 9 and 10.

Mr. Ken Petruzelli, San Joaquin River Group

50. *The number one issue is the beneficial uses issue because that starts everything. There really isn't a mechanism or process to address what I don't want to call necessarily de-designation, but site-specific uses or site-specific objectives. Something more precise that what is already in the Basin Plan. That would be more appropriate to the specific water body, given its hydrograph and its natural characteristics.*

Issue No. 4 (Beneficial Use Designations) in the Triennial Review Work Plan includes an initial discussion of this issue and some approaches that might address this concern.

51. *Stakeholders may be willing to fund Basin Plan amendments if they think that there is a possibility that the Basin Plan amendment might go forward. There is a kind of chicken or egg problem. Stakeholders might fund the process but they want to see that the process might go somewhere.*

Staff is available to discuss ideas for basin plan amendments and funding. The Central Valley Water Board has previously adopted Basin Plan Amendments brought up and funded by stakeholders. These amendments include site-specific water quality objectives pH, turbidiy and temperature for Deer Creek in El Dorado County; regionwide water quality objectives for pH and turbidity; de-designation of four beneficial uses of Old Alamo Creek in Solano County; and site-specific water quality objectives for chloroform, chlorodibromomethane, and dichlorobromomethane for New Alamo and Ulatis Creeks in Solano County and permit implementation provisions.

52. *With respect to salinity, Dr. Hoffman has drafted a report on crop salt tolerance in the South Delta that would be very good for salinity basin planning work.*

The Central Valley Water Board is very interested in the salt report prepared by Dr. Hoffman for the State Water Board. Staff has used Dr. Hoffman's approach to develop a similar report on salt tolerance of crops in the Lower San Joaquin River. Development of salt and boron objectives for the San Joaquin River upstream of Vernalis is being undertaken by the CV-SALTS effort. See Issue No. 1 (Salt and Nitrate Management) for more information.

53. *I concur with comments about re-evaluating the secondary MCLs. The three numbers that they usually have are really confusing in their application. As the DHS regulations are written, they apply to tap water which is treated while the Basin Plan applies them to surface water. And any one of those three numbers may or may not be appropriate for the specific surface water at issue.*

The Central Valley Water Board is also interested in evaluating the use of secondary MCLs as water quality objectives and will include this issue in the Triennial Review Work Plan as Issue No. 11 (Secondary MCLs as Water Quality Objectives).

Ms. Susan K. Moore, United State Department of the Interior, Fish and Wildlife Service

54. *The Commenter requested the following action to protect the quality of water delivered to wetland areas within the Grassland watershed, to protect federally listed species in the Grassland wetlands, and to protect existing and future runs of anadromous fish in the San Joaquin River: Addition of RARE beneficial use designation for protection of the giant garter snake in the public and private wetlands of the Grasslands and consideration and protection of this beneficial use.*

The Grasslands waterways will be included in Triennial Review Work Plan Issue No. 4 (Beneficial Use Designations) as water bodies that should have its beneficial uses reviewed.