HERUM CRABTREE
ATTORNEYS

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VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Danny McClure
Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, California 95670
dmcclure@waterboards.ca.gov

Re: Stockton East Water District/303(d) List

Dear Mr. McClure:

On behalf of Stockton East Water District (SEWD), we provide the following comments on the Proposed Revisions to the 303(d) List of Impaired Water Bodies and Consideration of an Integrated Assessment Report for the Central Valley Region.

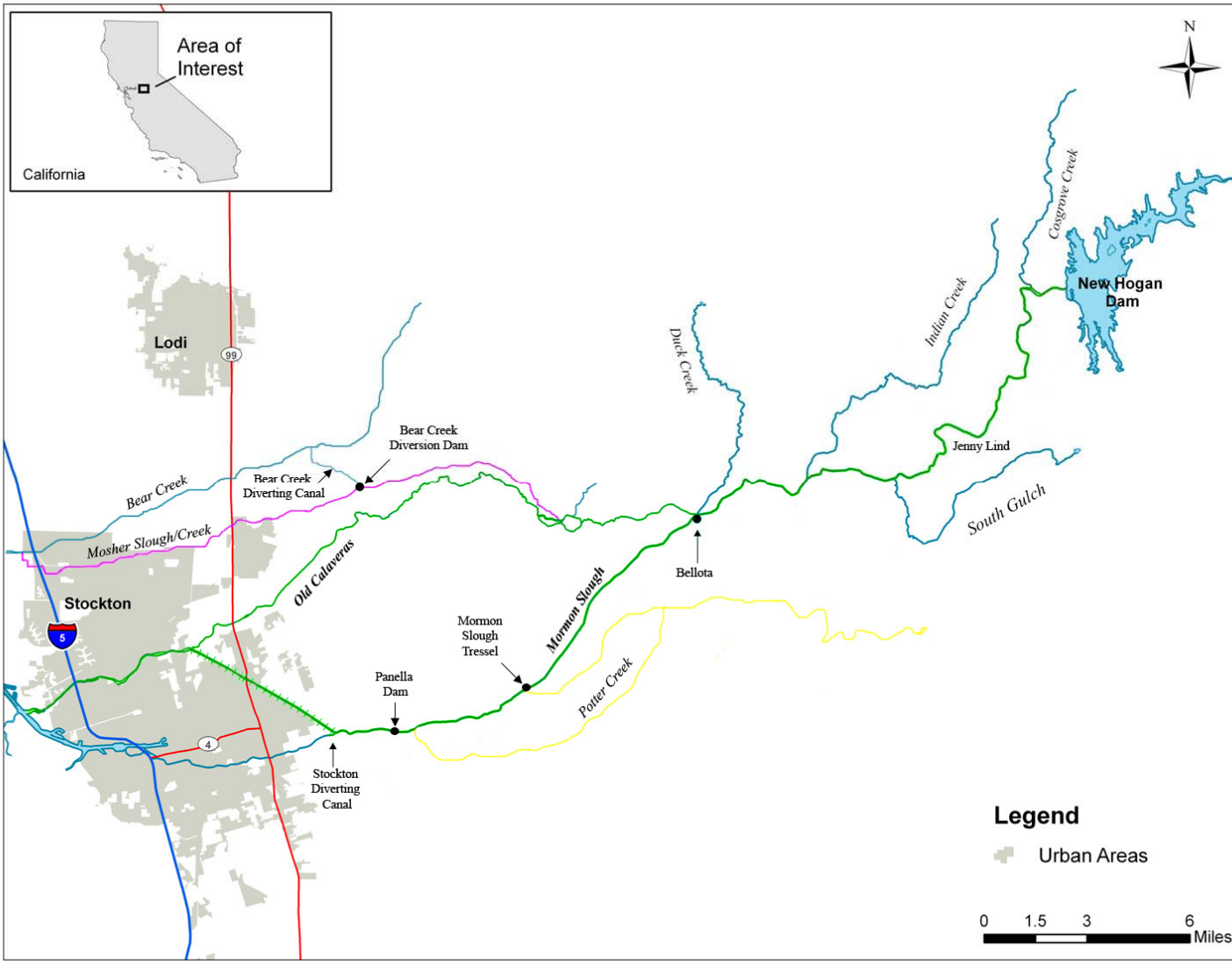
Calaveras River – Miscellaneous Changes

Appendix G changes the definition of Calaveras River, Lower to include the entire reach of the Calaveras River from the confluence with the San Joaquin River to New Hogan Dam, approximately 44 miles. There is no corresponding fact sheet that explains why the Calaveras River, Lower is extended from 5.8 to 44 miles. There was no sampling done in the reach above Bellota Weir to justify or EVEN suggest the Calaveras River above Bellota Weir is impaired for ANY pollutant. This "miscellaneous" change is not "miscellaneous," and could have a dramatic affect on SEWD operations on the Calaveras River. This change must be stricken and the Calaveras River, Lower should be defined as the 5.6 mile stretch from the confluence of the San Joaquin River up to just below the confluence of the Stockton Diverting Canal and the Old Calaveras River.

Water Body:	Calaveras River, Lower (partly in Delta Waterways, eastern portion)
Water Body ID:	CAR544000002011128144534
Water Body Type:	River & Stream
Change Type:	Water body areal extent modification
Change Information:	The mapped representation of this water body segment was extended up to the New Hogan Reservoir to better represent the area assessed. The areal extent was increased from 5.8 to 44 miles.

Change Date:	08/28/2008

Water Body:	Calaveras River, Lower (partly in Delta Waterways, eastern portion)
Water Body ID:	CAR5440000020011128144534
Water Body Type:	River & Stream
Change Type:	Water body name modification
Change Information:	The name of this water body was changed to include a description of the portion of the Delta Waterways in which it resides. 305(b) and 303(d) assessment decisions for the Delta Waterways, eastern portion, also apply to this water body segment. The previous name was "Calaveras River, Lower"
Change Date:	01/28/2009



This map depicts the Calaveras River basin. As you can see from the map, 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 only portion of the Calaveras River, Lower that may be impaired for any pollutant is that portion lying within the City of Stockton and ending prior to the confluence of the Old Calaveras River Channel and Stockton Diverting Canal. The Regional Board in the past recognized this fact and determined that the cause of impairment is "urban runoff/storm sewers." As such, SEWD respectfully requests the definition of Calaveras River, Lower not be modified and remain that portion of the river from the confluence of the San Joaquin River to just below the confluence of the Old Calaveras River Channel and the Stockton Diverting Canal.

Calaveras River, Lower /Mormon Slough (from Stockton Diverting Canal (SDC) to Bellota Weir) – Proposed 303 (d) Listings

The Water Quality Control Policy for Developing California Clean Water Act Section 303(d) List (Listing Policy) sets forth requirements that must be satisfied in order for a listing to occur. Of particular importance are the following sections:

> *Section 3.10 Trends in Water Quality*: A water segment shall be placed on the section 303(d) list if the water segment exhibits concentrations of pollutants or water body conditions for any listing factor that shows a trend of declining water quality standards attainment.
>
> *6.1.4 Data Quality Assessment Process*: Rationale for the selection of sampling sites, water quality parameters, sampling frequency and methods that assure the samples are spatially and temporally representative of the surface water and representative of conditions within the targeted sampling timeframe; and…Provide linkage between the measurement endpoint (e.g., a study that may have been performed for some other purpose) and the water quality standard of interest.
>
> *6.1.5 Data Quantity Assessment Process/6.1.5.1 Water Body Specific Information*: Data used to assess water quality standards attainment should be actual data that can be quantified and qualified. Information that is descriptive, estimated, modeled, or projected may be used as ancillary lines

of evidence for listing or delisting decisions. In order to be used in developing the lists:

- Data must be measured at one or more sites in the water segment;
- If applicable and available, environmental conditions in a water body or at a site must be taken into consideration (e.g., effects of seasonality, events such as storms, the occurrence of wildfires, land use practices, etc.); and
- The fact sheet shall contain a description of readily available pertinent factors such as the depth of water quality measurements, flow, hardness, pH, the extent of tidal influence, and other relevant sample- and water body-specific factors.

6.1.5.2 Spatial Representation: Samples should be representative of the water body segment. To the extent possible, samples should represent statistically or in a consistent targeted manner the segment of the water body.

6.1.5.3 Temporal Representation: Samples should be representative of the critical timing that the pollutant is expected to impact the water body. Samples used in the assessment must be temporally independent. If the majority of samples were collected on a single day or during a single short-term natural event (e.g., a storm, flood, or wildfire), the data shall not be used as the primary data set supporting the listing decision. Documentation should include the time of day in which the sample was taken, and, to the extent possible, the critical season for the pollutant and applicable water quality standard. In general, samples should be available from two or more seasons or from two or more events when effects or water quality objective exceedances would be expected to be clearly manifested.

6.1.5.4 Aggregation of Data by Reach/Area: Data must be measured at one or more sites in the water segment in order to place a water segment on the section 303(d) list.

The Listing Criteria outlined above establish a number of clear requirements in order to list a water body as impaired – the bottom line is that samples must be spatially and temporally representative of the surface water body and representative of conditions within the targeted sampling timeframe – samples cannot be based on single sampling location or single day.

<u>Calaveras River, Lower – Diazinon (Decision ID 6031)</u>

The evidence used to support the Regional Board denial of de-listing of Diazinon is not supported by the weight of the evidence. LOE 21718/LOE21708 are the only samples that show an exceedence of concentrations for Diazinon. LOE 21718 were samples taken in Ijams Road in 2002 and 2003. LOE 21708 were samples taken again at Ijams Road, but during storm events in 2004. There were no other samples that

exceeded concentration of Diazinon. Samples taken at Ijams Road in 2005 [LOE21709 and LOE 21759] show no impairment. Ijams Road is located at approximate River Mile 5. There are no samples upstream of Ijams Road that show an impairment. As such, there is no justification whatsoever for listing the 44 mile stretch as impaired. Arguably, the only area would be the original designation from the confluence of the San Joaquin River up 5 miles – all located within the City of Stockton. However, even this area is suspect as later sampling events show no impairment and therefore there is no general trend of declining water quality. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 and therefore, the Calaveras River, Lower should be de-listed for Diazinon. Should the Regional Board continue to list Diazinon, it should be limited to the 5 mile reach upstream of the confluence with the San Joaquin River.

Calaveras River, Lower - Organic Enrichment/Low Dissolved Oxygen(Decision ID 6631)

The evidence used to support the Regional Board's denial of de-listing of Organic Enrichment/Low Dissolved Oxygen is not supported by the weight of the evidence. The Regional Board relies on one line of evidence. LOE 21711 states that 14 samples were taken from the Calaveras River between 2004 and 2005 at the Calaveras River at Boleta [sic], Clements Road and Pezzi Road. It is important to note that NO samples were taken above Bellota Weir and there is no evidence of impairment either at Bellota Weir or above Bellota. The fact sheet does not identify when or where the exceedence occurred. The other two locations other than Bellota are along the Old Calaveras River Channel. This channel is dry from October through April, so it is unclear how the tests occurred either "bi-monthly or monthly." There is simply NO support for this listing. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 and therefore, the Calaveras River, Lower should be de-listed for Organic Enrichment/Low Dissolved Oxygen.

If the Regional Board continues to list Organic Enrichment/Low Dissolved Oxygen for the Calaveras River, Lower, it should be limited to the 5 mile reach upstream of the confluence with the San Joaquin River. The current draft establishes a 2008 completion date for a TMDL for the Calaveras River as originally contemplated in the 2002 listing, Lower for Organic Enrichment/Low Dissolved Oxygen. This date is not supported in the record. There has been very limited sampling and no analysis which warrants a change in the original priority status of TMDL implementation for the Calaveras River, Lower from "Low" to "High." Moreover, the affected reach constitutes only a very small area of the lower Calaveras River, exclusively within the urban area of Stockton which impairment is caused by urban runoff and storm sewers as noted in the listing.

Because of the limited number of samples taken to justify the original inclusion in the 2002 and 2008 listings and the fact that it is only a small area of the lower Calaveras River exclusively within the urban area of the City of Stockton that is impaired, we

believe that the Calaveras River, Lower does not meet the "high" priority designation and as such, we respectfully request that the TMDL completion date be moved to 2021 if it is not de-listed.

Calaveras River, Lower – Mercury (Decision ID 9828)

The weight of the evidence does not support listing of Mercury for the 44 mile reach of the Calaveras River from the confluence of the San Joaquin River to New Hogan. LOE 26128 sampling focused on two locations on the lower Calaveras River between Interstate 5 and Highway 99(approximate river mile 4-5). There were no sampling events beyond this one event. There is simply NO support for this listing. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 and therefore, the Calaveras River, Lower should not be listed for Mercury.

Calaveras River, Lower - Unknown Toxicity (Decision ID 12894)

The weight of the evidence does not support listing of Unknown Toxicity for the 44 mile reach of the Calaveras River from the confluence of the San Joaquin River to New Hogan. LOE 21772, 26361, 21768, 21773, and 21739 sample at Bellota Weir, at various locations along the Old Calaveras River Channel and a location noted as Calaveras River at Monte Vista trailhead (unclear of this location). Only one of these samples noted toxicity, and it is unclear where this particular sample was taken. No samples were taken above Bellota. LOE 21742 notes three of 10 samples showed plant toxicity, however, it is unclear where these samples are located. The Old Calaveras River Channel is no longer either a migration route or habitat for cold freshwater fishery, therefore, there is no impact to fishery if this one line of evidence is sufficient for justifying listing Unknown Toxicity for that portion of the Old Calaveras Channel. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 and therefore, the Calaveras River, Lower should not be listed for Unknown Toxicity.

Mormon Slough (SDC to Bellota Weir) – Chlorpyrifos (Decision ID 12620)

The weight of the evidence does not support listing of Chlorpyrifos for the 11 mile reach on Mormon Slough from the SDC to Bellota Weir. There was only one line of evidence presented. LOE 23029 collected samples on Mormon Solugh at Jack Tone Road. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 - clearly having on one sampling site does not meet the spatial or temperal requirements of the Listing Policy. As such, the Mormon Slough (SDC to Bellota Weir) should not be listed for Chlorpyrifos.

Mormon Slough (SDC to Bellota Weir) – Unknown Toxicity (Decision ID 12621)

The weight of the evidence does not support listing of Unknown Toxicity for the 11 mile reach on Mormon Slough from the SDC to Bellota Weir. There was only one line of evidence presented that showed any toxicity. LOE 23046 collected samples on Mormon Slough at Jack Tone Road. Based on the readily available data, the weight of the evidence DOES NOT satisfy either Section 6.1.4 OR 6.1.5 - clearly having on one sampling site does not meet the spatial or temperal requirements of the Listing Policy. As such, the Mormon Slough (SDC to Bellota Weir) should not be listed for Unknown Toxicity.

Stanislaus River – Proposed 303 (d) Listing – Temperature (Decision ID 15206)

We concur with the comments submitted by the San Joaquin River Group regarding the lack of factual or legal justification for listing the Stanislaus River for temperature. The San Joaquin River Group submitted comprehensive comments on November 19, 2007 which were effectively ignored. The use of U.S. EPA Region 10 temperature criteria is ridiculous when you compare the Northwest Coast rain and temperature with rain and temperature in the Central Valley. Site specific data is essential to ascertain the effects of water temperature on Chinook salmon and steelhead in the San Joaquin River system. The November 19, 2007 provides the site specific detail and must be used to evaluate impairment. Upon even a cursory review of the November 19, 2007 submittal, the Regional Board will conclude that listing the Stanislaus River for temperature impairment is not justified.

We appreciate the opportunity to comment and look forward to reviewing a revised 303(d) listing.

Very truly yours,

KARNA E. HARRIGFELD
Attorney-at-Law

KEH:md

cc: Kevin Kauffman