



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

March 16, 2009

Daniel McClure  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Mr. McClure:

Thank you for the opportunity to comment on the Central Valley Regional Water Board's draft 2008 Clean Water Act Section 303d list. We carefully reviewed the draft listing decisions and factsheets and we have concluded the vast majority of the assessment determinations are consistent with federal listing requirements. We write to support Regional Board staff recommendations to list waters impaired due to elevated temperature or water segments where toxicity is evident. We also include a concern regarding bacterial indicators assessments.

**Temperature Listings**

EPA supports staff recommendations to list San Joaquin River, its eastern tributaries and Yuba River – South Fork as impaired for temperature. The Basin Plan (Ch. 2) identifies the COLD freshwater habitat beneficial use applies to these waters, therefore water quality assessment for this use is appropriate. Federal regulations require the assessment of whether waters are attaining all applicable standards including narrative standards (40 CFR 130.7(b)(3)). The staff's assessment methodology for the narrative standard is reasonable and technically sound; other Regional Board's have utilized the protocol of evaluating the seven day average daily temperature (7DADM), a.k.a. "maximum weekly maximum temperature." Staff have properly relied on scientifically, peer-reviewed guidelines for protecting salmon and steelhead trout at various lifestages (EPA 2003).

**Toxicity Listings**

EPA supports staff recommendations to list various water segments due to toxicity results. A waterbody is determined to be impaired, as measured by any one of three approaches (chemical-specific, toxicity testing, and biological criteria/bioassessment) for protection of aquatic life. Since each method has unique, as well as overlapping attributes, sensitivities, and program applications, no single approach for detecting impact should be considered superior to any other approach. The most protective results from each assessment conducted should be used in water quality assessments. The State's Listing Policy appropriately provides that "waters may also be placed on the section 303(d) list for toxicity alone." This is consistent with federal listing

guidelines and EPA's position that the concept of "independent application" be applied to water quality-based situations (USEPA 1991).

We found some waterbodies (e.g., Deer Creek in Tulare County and San Joaquin River, Bear Creek to Mud Slough) that appear to meet federal listing requirements and may have improperly been placed on the proposed Do Not List. The *E.coli* results for Water Contact Recreation use show exceedances of the single sample bacteria guideline; e.g., San Joaquin River shows 21 exceedances out of 128 samples. We urge the Regional Board to provide a more complete explanation as to why these or other similar bacterial indicators assessments have resulted in conclusions that water quality standards are not being exceeded and are not included on the impaired waters list. Our preliminary review indicates that such waterbodies are indeed impaired and thus EPA may add it, if the State decides to not include it or others like it on the 2008 list.

In conclusion, the staff have produced a sound framework for assessing the condition of its waters. We urge the Board to adopt staff recommendations at the April 2009 board meeting and promptly submit the 2008 list to State Board shortly thereafter. If you have any questions concerning our comments, please call me at (415) 972-3448.

Sincerely yours,

Peter Kozelka, Ph.D.  
303(d)/TMDL Coordinator  
Water Division

References:

USEPA 2003. *EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*. EPA 910-B-03-002. Region 10 Office of Water, Seattle, WA.

USEPA. 1991. Transmittal of final policy on biological assessments and criteria. Office of Water. Washington, DC. June 19, 1991.