

October 19, 2016

Comments by Steven Wooster on RWQCB "Draft California 2014 Integrated Report 303(d) list/305(b) Region 3 – "303(d) List Revisions"

We hold the grazing permit on the Highland Lakes Allotment, Stanislaus National Forest. "Elbow Creek, unnamed tributary below Sheep Meadow (Alpine County)" is on that allotment.

We had no notice of the proposed action to list this tiny creek on the section 303(d) list, as TMDL required, until Monday, October 17, 2016, with comments due on October 20. That is not sufficient time, but we comment below as best we can.

The data relied upon and the staff conclusions from the data are suspect, for these reasons.

1. The staff conclusion states that four lines of evidence ("LOEs") are available, and five of nine samples exceed evaluation guidelines for E.coli. Six lines of evidence appear in the fact sheet as being for this Decision. They reflect 27 samples, of which 10 are listed as "exceedances".
2. Two of the LOEs, numbers 63352 and 63360, state the samples were taken at "Jawbone Creek", nowhere near Sheep Meadow or Elbow Creek.
3. Of the remaining samples, two are listed as taken "at Sheep Meadow" (numbers 63350 and 63349). That meadow lies at the head of this tiny stream. Five of the nine samples are said to exceed the E.coli objective.
4. The remaining samples are listed as collected "at Elbow Creek, unnamed tributary below Sheep Meadow". One LOE (63359) shows zero exceedances for three samples. Another (63351) shows three exceedances for three samples, but it does not specify by how much.
5. All of the LOEs reflect "Not Specified" for "Data and Information Type". Two show blanks for "Evaluation Guideline" and "Guideline Reference" (numbers 63352 and 63351). But LOE 63551 under "Water Quality/Objective Criterion" lists fecal coliform not exceeding 200/100 ml, and 63352 lists 400/100 ml. The others vary from 126 to 235 to 1000 to 10,000/100 ml. It appears that consistent standards were not applied.
6. Four LOEs reflect samples taken between August 2 and August 23, 2010. Two (collected at Sheep Meadow) show collection "between June 2010 and August 2010" – a three month period. Our cattle typically are on that part of the range

- from shortly after July 1 to about August 1. It cannot be ascertained from these LOEs whether samples were collected during periods when the water was stagnant and not flowing, or whether those doing the collecting waited until just after the cattle left the area, or what the counts would be a month later.
7. There is no definition of the water body segment being analyzed, or any explanation as to why, or how, the segment (whatever it is) was selected. Apparently these samples were collected at either the Sheep Meadow, or somewhere unspecified along the tributary below it. There is no mention of samples taken from Elbow Creek below the confluence of it and this unnamed tributary, or from the North Fork Mokelumne River below its confluence with Elbow Creek.
 8. The selection of the meadow itself, and only the very small tributary below it, as sampling sites, suggests that the group that selected the sites did so to maximize the chances of finding exceedances. That this is the case is supported by the very name of the “study” under which samples were collected (“Bacteria Contamination of Surface Water Due to Livestock Grazing in the Stanislaus National Forest”).
 9. There is no evidence that either Elbow Creek or the North Fork of the Mokelumne River below Elbow Creek are “impaired”. In fact, the North Fork is not on the TMDL required list.
 10. Each LOE reflects “Beneficial Use” as “Water Contact Recreation”. The tiny tributary – and it nearly dries up in the summer – does not support any “water contact recreation”. It flows – when it flows – down a steep hillside to Elbow Creek - which itself carries very little water late in the summer.
 11. We submit that it is improper to list as “impaired” with TMDL required an unnamed, undefined stretch of a tiny tributary, that carries very little water down a steep hillside, unsuitable for any “water contact recreation”, and selected by an organization focused on trying to find contamination from livestock, with no notice to the people who own the livestock.
 12. Finally, there is no federal Clean Water Act jurisdiction over this tributary, high in the Sierra Nevada mountains, carrying very little water, far from any downstream navigable body of water, and lacking any significant connection to one.