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March 16, 2009

Mr. Danny McClure
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

Re: Proposed Revisions to the 303(d) List of Impaired Water Bodies and Consideration of an Integrated Assessment Report for the Central Valley Region

Butte Environmental Council (BEC) appreciates the opportunity to comment on the proposed 2008 draft revisions to the 303(d) List of Impaired Water Bodies and submits the following comments.

In 2005, SB 469 was passed to amend California Water Code addressing the Total Maximum Daily Load (TMDL) program and was integrated into Section 13191 as an urgency statute for immediate preservation of the public peace, health, or safety. At that time, documentation supporting this legislative change stated, "The water quality of many waters of the state is currently unacceptable." The TMDL program was designed as the primary program responsible for achieving clean water where traditional controls on point sources have proven inadequate to do so. The Water Boards use the TMDL program to craft implementation plans to ensure waters meet all applicable standards as soon as is practicable. "The TMDL program remains a high priority program of the Water Boards."

Water Quality Objectives are outlined in the Basin Plan, which states that achievement of these objectives depends upon applying them to controllable water quality factors and through the adoption of waste discharge requirements. Policies have been written to ensure that the impaired waters of the state are addressed in a timely and meaningful fashion. Yet, Butte County has 14 waterbodies that have made the Region 5 proposed 303(d) list, some of which have documented impairments dating back to 1990. Most of these waterbodies are listed for exceedances found between 1999 and 2004. Some of Butte County's impaired waterbodies will not make the list because a recent TMDL has been approved, hindering a significant paper trail. This will be the first time that most of these waters have been suggested for the 303(d) list. *We do not carry this listing as a badge of honor.*

In addition to monitoring for and attempting to clean impaired waters, State and Federal law attempts to protect waters of high quality through the antidegradation policy. Regional Water Boards must apply this policy whenever it takes an action that will lower water quality, including issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, or waivers of waste discharge requirements (ILP). Application of this policy does not depend on whether the action will actually impair beneficial uses.

“The first step in any antidegradation analysis is to determine whether or not the proposed action will lower water quality.”

(Region 9, U.S. EPA, Guidance on Implementing the Antidegradation Provisions of 40 C.F.R. 131.12, June 3, 1987).

The Sacramento River Watershed Program (SRWP) 2003–2004 annual report indicated that Dry Creek and Little Chico Creek may be affected by significant historical mining operations in those watersheds. The New Era Mine is operating under a 1982 mining permit because of a system failure by our County, the lead agency for issuing permits. In August of 2007 neighbors along Dry Creek noted the water was turbid and called the RWB resulting in a Cleanup and Abatement Order. The WDR has still not been approved and multiple pollutant issues have been noted. It should be a requirement that WDRs are approved rapidly, that industry creating pollution cannot operate until the WDR is in place, and that robust data collection occurs before, during, and after said affects will take place. We must make it a priority that data submitted to RWBs under all permits become part of the 303(d) solicitation process. It is incumbent upon the RWB to ensure that the antidegradation policy is enforced in areas where little to no knowledge of background water quality exists. Conclusory, unsupported and undocumented statements cannot serve in lieu of a legally required antidegradation analysis.

“The discharge of greatest concern in the Sacramento and San Joaquin River Basins is the result of ore exploration and extraction. Drainage and runoff from mines and various operations associated with mining can result in serious impacts to ground and surface water beneficial uses, if not properly managed.”

BEC submitted a letter dated June 2004 – Solicitation comments regarding Butte Creek, Little Chico Creek, Mud Creek, Dry Creek. Chico, CA (as found in the 2002/2006 California 303(d) Administrative Record, Regional Board 5 reference number 150) – stating:

“Monitoring of Dry Creek above Cherokee Canal in the 2001-2003 year indicates that there is significant mercury toxicity (Sacramento River watershed program 2002-2003 Monitoring Report, p.22). This segment fails the Maximum Contaminant Level (MCL) of 50 ng/l in the Central Valley Basin Plan in 13.7% of the data. It also fails the USEPA national criterion of 12 ng/l for the protection of human health in 42.3% of the data collected and the 3.1 ng/l standard used in the Great Lakes Initiative (adopted based on bioaccumulation factors for the protection of human health) 74.4% of the time. Additional monitoring of Dry Creek and Cherokee Canal must occur.”

The data can be found in: SRWP_AnnualMonitoringReport_2002-2003.pdf.

“Efforts to control drainage have gradually expanded over the years. Staff assessments of mine water quality problems done in 1979 and 1992 helped direct the Regional Water Board's approach to the problems. When other options were exhausted, the Regional Water Board has used public funds to abate pollution from these mines.”

Sediment generation at the New Era Mine has been an ongoing problem. Dry Creek is a tributary to Cherokee Canal where millions of tax payer dollars (most funding came from the General Fund) have been spent to remove over 600, 000 cubic yards of sediment between 1974 and 1996.

The Sacramento Valley Water Quality Coalition (SVWQC) prepared and submitted a Monitoring and Reporting Program Plan (MRPP) to meet requirements of the State Water Board's Irrigated Lands Program (ILP) in April 2004. In 2005, Butte County's Agricultural Commissioner, SVWQC, and the State Water Board signed an MOU, unique to the state, outlining specific activities the County engages in to support the ILP and provides the County a staff biologist (0.5PY).

Since implementation of this MOU no additional resources have been used to identify natural background water quality levels or identify possible sources for our water quality exceedances. In 2007–2008 exceedances for E. Coli, pH, Chlorpyrifos were found on Pine Creek, where local ILP has focused effort; however, no mention of these exceedances were found in the annual report or what BMPs are being implemented to reduce future exceedances. In addition, this water body did not make it on the 303(d) list. Issues with pH fluctuations and exceedances for Butte Creek date back to 1999, however, this data has never driven the development of a monitoring plan through the ILP that would help isolate probable causes.

In conclusion, monitoring and protection of our waters are critical to the State. Immediate attention must be given to the timely resolution of Water Board actions put into place to protect our waters, the development of necessary TMDLs and approval of WDRs, with tighter requirements for data collection and submittal; and finally, upholding the antidegradation policy. These actions are requirements of federal and state law and cannot be ignored.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

Carol Perkins
Water Quality Advocated
Butte Environmental Council