



March 16, 2009

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

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

Dear Mr. McClure,

The East San Joaquin Water Quality Coalition (ESJWQC) appreciates the opportunity to comment on the 2008 proposed revisions to the 303(d) list of impaired water bodies in the Central Valley Region. The ESJWQC has been monitoring water bodies within its boundaries as part of the Irrigated Land Regulatory Program (ILRP) since 2004 and has extensive knowledge of the water bodies within the Coalition's area including current land use, hydrology and water quality. Within the Proposed Revisions to the 303(d) List of Impaired Water Bodies document (2008 303(d) list) the Coalition would like to express its concern regarding the Central Valley Regional Water Quality Control Board's (Regional Board) method for listings involving metals in seven water bodies and the listing of Jones Drain for all constituents. In addition, the ESJWQC would like to note that it disagrees with the beneficial use designation applied to many of the water bodies in the Coalition region. The following comment letter is divided into three sections: metals listings, Jones Drain listing and beneficial uses.

Metals Listings

The ESJWQC identified the following water bodies that are proposed for listing for metals using total metal data applied to the California Toxics Rule (CTR) dissolved metals criteria:

1. Ash Slough: copper and lead
2. Berenda Creek (Madera County): copper
3. Cottonwood Creek (Madera County): copper
4. Dry Creek (Madera County): copper and lead
5. Duck Slough (Merced County): copper and lead
6. Highline Canal (from Main Canal to Lateral No 8, Merced and Stanislaus Co): lead
7. Jones Drain (Tributary to Merced River, Merced County): copper and lead

The data collected for the above seven subwatersheds were analyzed for total metals and compared against a criterion developed using a hardness based formula outlined in the Regional Board's "A Compilation of Water Quality Goals". However, the Federal Register Environmental Protection Agency 40 CFR § 131 Water Quality Standards, Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, May 18, 2000 (also known as the California Toxics Rule), states:

"It is the Agency's policy that the use of dissolved metal to set and measure compliance with aquatic life water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of the metal in the water column than does total recoverable metal."

Since previous EPA aquatic life criteria were based on total recoverable metals, the California Toxics Rule (CTR) includes conversion factors to express the criteria as dissolved. The EPA created translators for dissolved to total recoverable metals limits due to National Pollutant Discharge Elimination System (NPDES) regulations which may require limitation to be reported as total recoverable. This is specific to NPDES permits where it is important "to translate between dissolved metal in ambient water and total recoverable metal in effluent" (40 CFR § 131.38). The total recoverable metal data for copper and lead from Ash Slough, Berenda Creek, Cottonwood Creek, Dry Creek, Duck Slough, Highline Canal and Jones Drain were not collected under an NPDES permit nor are inputs to these water bodies similar to inputs from a point source discharge. Therefore the listings of the water bodies due to metals are incorrect as they improperly use total recoverable metal results with dissolved metal criteria.

Starting in the fall of 2009 under a new Monitoring Reporting Program Plan (MRPP) under the Irrigated Lands Regulatory Program, the ESJWQC is collecting total and dissolved metal data for cadmium, copper, lead, nickel and zinc. The ESJWQC recommends that the Regional Board delay any decision about listing due to metals until information on the concentrations of dissolved metals is available.

In addition, the ESJWQC has noted a typo in the fact sheet for Berenda Creek. Under "Data Used to Assess Water Quality" the fact sheet dictates that samples were collected in 2006 however the results are from 2005. The section "Temporal Representation" correctly references the data from June to August 2005.

Jones Drain

Jones Drain (Tributary to Merced River, Merced County) is a proposed water body to be listed as impaired for copper, lead and dissolved oxygen. Samples were collected from Jones Drain @

Oakdale Rd by the ESJWQC between 2005 and 2007 under the ILRP. In 2007 the Coalition became aware that this drain was actually the Shaffer-Griffith Ditch despite various maps and aerial photos indicating that this water body flowed into Jones Drain. After discussions with the landowner it became clear that Jones Drain had been modified and the location sampled by the ESJWQC did not flow into the Merced River; rather this water never leaves the landowner's property. A visit to the site by the Coalition and representatives from the Regional Board confirmed that water could not flow into the Jones Drain. The ESJWQC submitted a request to remove this site from monitoring on August 15, 2007 and received a signed letter of approval from the Executive Officer on December 14, 2007 (Attachment A). It is incorrect to list this water body as Jones Drain and since this water is retained on private property, and it should not be listed on the proposed 2008 303(d) list.

Beneficial Uses

Based on the San Joaquin Valley 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 proposed 2008 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 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.

Respectfully Submitted,

Parry Klassen
Executive Director
East San Joaquin Water Quality Coalition

Enclosures: 1. Attachment A: Permanent monitoring site removal letter for Jones Drain under the ILRP.

Cc: Karen Larsen, Central Valley Regional Water Quality Control Board
Dania Huggins, Central Valley Regional Water Quality Control Board
Debra C. Liebersbach, Turlock Irrigation District
Michael L. Johnson, Michael L. Johnson, LLC

Attachment A. Permanent monitoring site removal letter for Jones Drain under the ILRP.



Linda S. Adams
Secretary for
Environmental
Protection

**California Regional Water Quality Control Board
Central Valley Region**

Karl E. Longley, ScD, P.E., Chair

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Arnold
Schwarzenegger
Governor

14 December 2007

Mr. Mike Johnson, Program Manager
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Mr. Parry Klassen
East San Joaquin Water Quality Coalition
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Modesto, CA 95354

**PERMANENT MONITORING SITE REMOVAL FROM THE EAST SAN JOAQUIN WATER
QUALITY COALITION MONITORING PROGRAM PLAN**

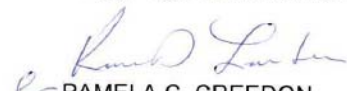
The East San Joaquin Water Quality Coalition (Coalition) submitted a proposal on 15 August 2007 to modify its Monitoring and Reporting Program Plan (MRP Plan) by removing Jones Drain at Oakdale Road site. The rationale for the proposal is based on:

- (1) The site was mis-identified and is not located on the Jones Drain, and
- (2) The drainage on which the monitoring site is located does not leave the landowners' properties, or drain into the Merced River.

Staff of the Regional Water Quality Control Board (Regional Board) has investigated the proposed monitoring site removal, as described in the attached memorandum, and concurs that it is not appropriate as a location used to evaluate compliance with the Conditional Waiver. Therefore, Regional Board approves the elimination of the Jones Drain at Oakdale Road site from the ESJWQC MRP Plan.

Additionally, previous monitoring results taken from this location should not be used to evaluate the effects of irrigated agriculture on waters of the State and the development of Management Plans based on this same data is not needed.

If you have questions, please contact Dania Huggins at (916) 464-4843, or by e-mail at dhuggins@waterboards.ca.gov.


for PAMELA C. CREEDON
Executive Officer

Enc: Staff memorandum, 12 December 07
cc: Mike Bettencourt and Pat Ferrigno

California Environmental Protection Agency



East San Joaquin Water Quality Coalition

14 December 2007

Bcc: Mr. Joe Karkoski, Central Valley Regional Water Quality Control Board
Ms. Margie Read, Central Valley Regional Water Quality Control Board
Ms. Dania Huggins, Central Valley Regional Water Quality Control Board

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Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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Arnold
Schwarzenegger
Governor

TO: Margie Lopez Read
Senior Environmental Scientist
Monitoring and Assessment Unit

FROM: Dania Huggins
Water Resources Control Engineer
Monitoring and Assessment Unit

DATE: 12 December 2007

SIGNATURE: 

PERMANENT MONITORING SITE REMOVAL FROM THE EAST SAN JOAQUIN WATER QUALITY COALITION MONITORING PROGRAM PLAN

The Regional Water Quality Control Board (Regional Board) received the East San Joaquin Water Quality Coalition (ESJWQC) request to remove the site identified as Jones Drain @ Oakdale Road from the ESJWQC Monitoring and Reporting Program Plan (MRP Plan) on 15 August 2007. The rationale provided for removal of this site is:

1. The site was selected based on aerial maps and the location was thought to be the Jones Drain, which would empty into the Merced River. This turned out not to be the case.
2. The actual site that had been monitored turned out to be a ditch known as the Shaffer-Griffith ditch which does not leave the landowners property, and does not empty into the Merced River.

Regional Board staff confirmed items (1) and (2) through a field site visit and detailed examination of the properties adjacent to Shaffer-Griffith ditch on 21 September 2007. This visit was guided by Mike Bettencourt and Pat Ferrigno, who are owners of adjacent properties as well as ESJWQC representatives Melissa Turner and Dr. Michael Johnson. The same day Pat Ferrigno made arrangements for Regional Board staff to receive an updated map of the subwatershed area. This map also confirmed the description in items (1) and (2) in addition to the location of intake from Merced River, points of re-diversion, and accurate watercourse identification for both the Shaffer-Griffith ditch and Jones Drain.

(1) Jones Drain @ Oakdale Road site is not on Jones Drain

The ditch that is the main channel off of the Merced River is the Shaffer-Griffith ditch (Figure 3), not the Jones Drain. Early maps clearly mark the ditch with the name Shaffer-Griffith. The ditch continues through the south side of the valley eventually collecting irrigation return flows from the Bettencourt property. At the edge of the Bettencourt property, a flap gate prevents flow from moving underneath across Oakdale Road (Figure 4). The flows are diverted to a

California Environmental Protection Agency



large ditch which collects the irrigation return water, and a large pump has been installed to pump the water back to the Bettencourt property for irrigation.

(2) Jones Drain @ Oakdale Road site (Shaffer-Griffith ditch) does not connect to a downstream water body.

Water in the Shaffer-Griffith ditch is allowed through the flap gate to the P&H Ranch based on an agreement between Bettencourt Farms and P&H Ranch. When needed for irrigation by P&H Ranch, Bettencourt Farms allows the gate to open and water flows under Oakdale Road and is diverted to several fields on the P&H Ranch property. At this point, the water from the Shaffer-Griffith ditch is blocked and does not move downstream (Figure 6), and consequently, there is no connection between the Shaffer-Griffith ditch and the Merced River.

The main objective of the Conditional Waiver for Discharges from Irrigated Lands is "to assess the sources and impacts of waste in discharges from irrigated lands to surface waters (water of the state) and its beneficial uses." Since it is clear that the water from "Shaffer-Griffith ditch" is maintained for re-use on the site of the property owner, and does not discharge into the Merced River, staff can support the request of removing Jones Drain @ Oakdale Road site from the ESJWQ MRP Plan.

DH: dh

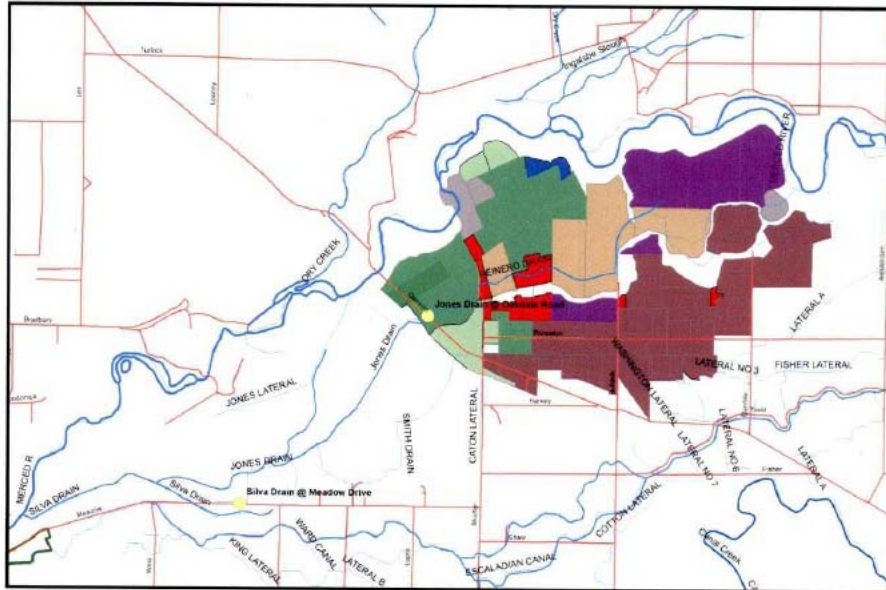


Figure 1. Site subwatershed map of land use for the Jones Drain @ Oakdale Rd sample site. The highlighted points mark current sampling sites.

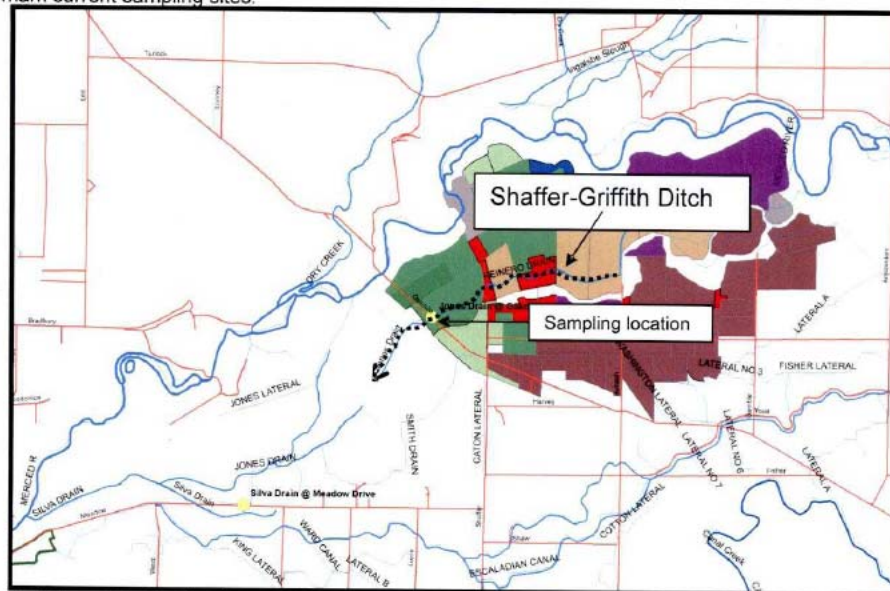


Figure 2. Site subwatershed map of land use for the Jones Drain @ Oakdale Rd sample site. The highlighted points mark current sampling sites (after 21 September 2007 tour to the Shaffer-Griffith ditch area).



Figure 3. Shaffer-Griffith ditch is the main channel off of the Merced River.

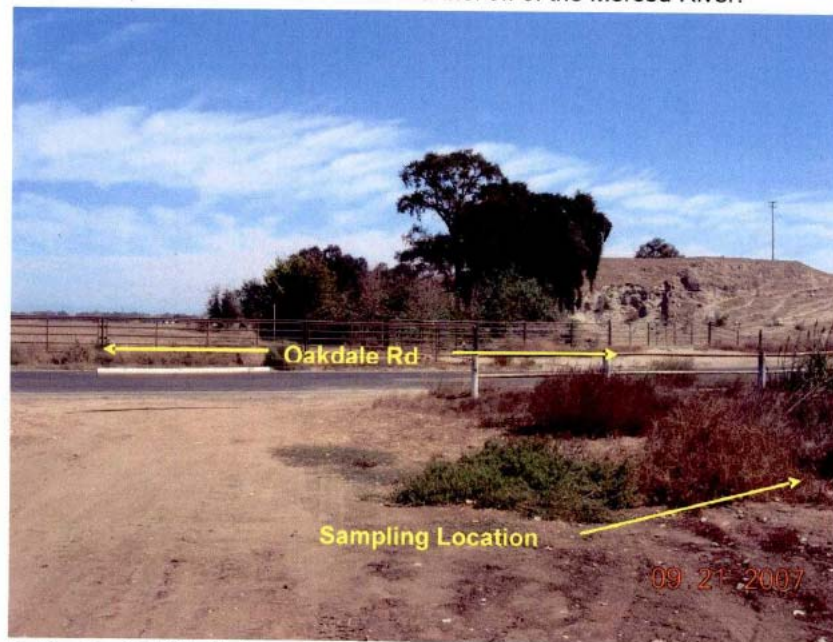


Figure 4. Shaffer-Griffith ditch moving underneath across Oakdale Road.



Figure 5. ESJWQC monitoring location at Shaffer-Griffith ditch and Oakdale Road.