

BOARD OF SUPERVISORS COUNTY OF MADERA

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TANNA G. BOYD, Clerk of the Board

May 26, 2010

Charles R. Hoppin, Chair
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

RE: Proposed 2010 Integrated Report, Clean Water Act Section 303(d)

Dear Chairman Hoppin and Board Members:

On behalf of Madera County, I am writing in opposition of the proposed addition of eight Madera County water bodies to the Federal Clean Water Act Section 303(d) List. My concerns stem primarily from the data used for placement on the list as well as from the effects the listing will have on my constituents as it relates to the proposed AB 885 septic system regulations.

In regards to the Fresno River in particular, Madera County has contracted with the California State University, Fresno Biology Department to perform field studies on this particular portion of the river and conduct an overall analysis on the health of the existing watershed. In the proposed 2010 Integrated Report, Clean Water Act Section 303(d), the Fresno River (above Hensley Reservoir to confluence with Nelder Creek and Lewis Fork) is listed due to low Dissolved Oxygen. This finding was based on 15 data points collected by the RWQCB during 2001-2002. Seven of the 15 data points were deemed to be below the threshold criteria for dissolved oxygen as per designated use of the upper Fresno River.

We noted that most of the seven samples were taken during August and October, when conditions of low flow and warm water will naturally lead to low dissolved oxygen levels. In general, low flow reduces water turbulence and thus gas exchange with the atmosphere, and the solubility of gases decreases with temperature. Our 2008-2009 study data from both septic and sediment sites reflect these relationships; dissolved oxygen (DO) relationships with water discharge and temperature are both highly significant ($P < 0.001$) (**Figure 3.3**)

The listing decision cites Beneficial Use as 'Warm Freshwater Habitat', and states the Water Quality Objective/Criterion as: "The Basin Plan Objective sets the minimum Dissolved Oxygen content at 8 mg/L". However, the latest version of the Basin Plan (revised Sept 2009) for the Central Valley RWQCB lists the DO threshold for Warm Freshwater Habitat as 5.0 mg/L (Water Quality Objectives III-5.00). By this criteria, only five of the 15 samples in question would be below the threshold, and according to 303(d) TMDL criteria, 5 or more samples is the threshold for listing for sample sizes ranging from 5-30.

This recent listing brings into question the validity of samples now 8 to 9 years old and whether new data would allay the listing process or be adequate to meet guidelines for 'delisting'. In our 2008-2009 assessment, we found

that 5 of 27 samples were below even the 5.0 mg/L DO threshold, which is the *minimum* number of exceedances for this sample size. However, the range of sample sites in the 2001-2002 data were fairly narrow, as the stations per the criteria included only FRR050, FRR060, FRR080, FRR090. If we include the same range of sample sites from the 2008-2009 data, the result is 2 of 17 samples below 5.0 mg/L, which is not a sufficient proportion of samples for 303(d) listing.

Furthermore, we continue to be concerned with how the updated 303(d) List relates to the State Water Resources Control Board's proposed AB 885 septic system regulations. We understand that the initial proposal is being rewritten and should be released sometime this summer. Currently, we are unsure if the requirement will be included that property owners perform costly retrofits if a septic system is deemed contributing to the impairment.

I am concerned with the effects such a requirement will have on our constituents. There are numerous property owners with septic systems near the Fresno River, many of them low-income. If the State is going to require these individuals to undergo expensive studies and even more expensive retrofits, it should be held to a high standard of proof that the systems are a likely cause of the water impairment. As is the case with the Fresno River, evidence does not support its placement on the 303(d) list. Given the above-mentioned points, it would not be appropriate for the Board to take the proposed action of listing the Fresno River on the 303(d) list. Since data on the other Madera County water bodies is similarly dated, I have to also question their validity.

Thank you for your time and consideration.

Respectfully,

A handwritten signature in blue ink that reads "Tom Wheeler". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Tom Wheeler
Chairman

Cc: Honorable Dave Cogdill
Honorable Jeff Denham
Honorable Tom Berryhill
Honorable Mike Villines
CSAC
RCRC
Advocation, Inc.

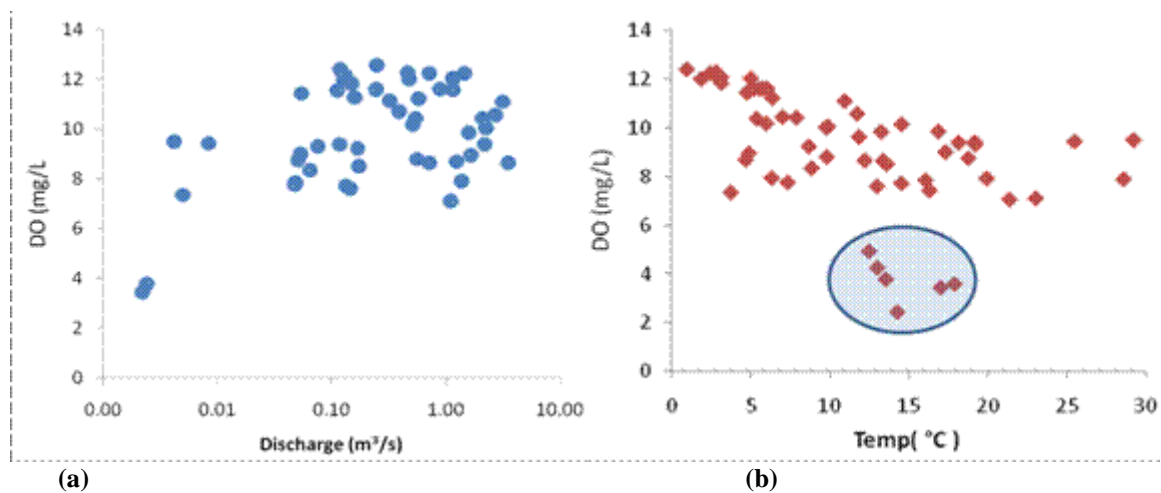


Figure 3.3. Dissolved Oxygen versus discharge (a) and water temperature (b) from both sediment and septic sampling events. Both relationships are highly significant. Points in oval in (b) are all from the November storm sampling event. Discharge measurements were not possible in all circumstances, resulting in fewer data points in panel (a).