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Song Her  
Secretary to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



RE: Comment Letter-2006 Federal CWA Section 303(d) List

To the State Water Resources Control Board:

These comments are being submitted on behalf of the Merced Irrigation District (MID) in response to the proposal to list the lower Merced River as impaired for mercury based on two fish tissue samples from 1998. The district repeats its earlier recommendation that the SWRCB not place the lower Merced River on the CWA 303(d) list at this time.

We agree with the staff's conclusion in its response to comments that the sampling size meets the state's listing criteria. However, we again would like to point out the following facts and circumstances peculiar to the lower Merced River:

1. The recommendation to list is based on only two samples. There are no other data in the record to suggest that mercury does or does not impair beneficial uses in the lower Merced River.
2. The San Joaquin River, approximately 1 mile from the sampling location, is currently listed as impaired for mercury. The Merced River above McSwain Dam is not listed for mercury.
3. The listing is based on fish tissue samples taken from two fish on the same day 8 years ago in the same location near the mouth of the Merced River, yet the proposal is to list the entire 22-mile segment of the lower Merced River from McSwain Dam to the mouth.

The staff's response ignored MID's comments that the sampling on which the listing recommendation is based does not meet the listing policy guidelines for spatial

and temporal representation. The two samples were collected at the same site, at the lower end of the river segment, and on the same day. The response indicated that the Listing Policy requirements provide "sufficient latitude" in assessing water bodies. Unfortunately, there are no guidelines for how staff is to exercise its discretion. For example, staff was comfortable with exercising its discretion in revising the fact sheet for the Sacramento River as impaired for mercury because the samples were not representative of the entire river segment.

The staff's response to the comment that the fish could have easily migrated upstream from the listed San Joaquin River misses the point. The district is well aware that catfish and largemouth bass are different species. There is no indication in the record that the two fish were residents of the lower Merced River or that the mercury they ingested was from Merced River sources. The fact that they were captured 1 mile from a river that is already listed as impaired for mercury should at least raise some suspicions on the part of staff.

Instead of evaluating the comments made by MID, the staff instead responded that their assessment is "precautious." If it is so necessary to be cautious, why has staff still not set a deadline for establishing a TMDL for the lower Merced River? MID's earlier comment letter pointed out this omission from Table 9 (now Table 11) of the Staff Report, and it has yet to be corrected.

Thank you for the opportunity to provide these comments.

Very truly yours,

MASON, ROBBINS, BROWNING & GODWIN

  
ARTHUR F. GODWIN

cc: Ted Selb, Merced Irrigation District