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1/5/06 303 (d) Workshop
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December 15, 2005

Selica Potter, Acting Clerk to the Board
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Executive Office
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RE: Comments to the Revised CWA Section 303(d) List

This office represents the Merced Irrigation District (the "District") and these comments are directed to the proposal to list the lower Merced River (McSwain Reservoir to San Joaquin River) as impaired for mercury. The District disagrees with the staff's recommendation and requests that the State Water Resources Control Board ("SWRCB") not list the lower Merced River at this time and delay any decision for listing this segment as impaired for mercury until additional information can be obtained.

The District recognizes that based on the number of measured exceedances, the segment qualifies for listing as indicated in Table 3.1 of the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (the "Policy"); however, the District believes that because of the particular circumstances, the proposal to list this segment is not warranted.

The lines of evidence for the staff recommendation consist of two fish tissue samples collected in 1998. The fish sampled include one largemouth bass and one channel catfish. Both fish were taken near the mouth of Merced River at George J. Hatfield State Recreation Area. We are aware of no other fish tissue sampling for mercury that has been conducted in the Merced River since that time.

The entire watershed of the Merced River above McSwain Reservoir, including Lake McClure, is not currently listed for mercury. The San Joaquin River, on the other hand, has been so designated both above and below the Merced River mouth, from Bear Creek, more than 10 miles upstream of the mouth of the Merced River, to the Delta. George J. Hatfield State Recreation Area is located approximately one mile from the mouth of the Merced River. The attached map shows the location of the George J. Hatfield State Recreation Area in relation to the lower Merced River and the 2002 CWA 303(d) mercury-impaired waters in the San Joaquin Basin.

Both largemouth bass and channel catfish are highly mobile and could have easily swum upriver. As a result, we have no way of knowing whether these two fish ingested mercury while residing in the San Joaquin River, the Merced River, or elsewhere. In fact, these samples may not be representative of the lower Merced River.

Section 6 of the Policy contains guidelines for implementing the Policy. Section 6.1.5.2 requires that samples be representative of the water body segment and that "samples should represent statistically or in a consistent targeted manner the segment of the water body." Furthermore, samples collected within 200 meters of one another are to be considered samples from the same station. Under the heading of *Spatial Representation*, the Fact Sheet that supports the listing states that the samples were taken from "one station at George J. Hatfield State Recreation Area." The segment proposed for listing is more than fifty-six miles long. Since both samples were obtained from the same location, they fail to meet the spatial representation guidelines contained in the Policy.

Additionally, the samples taken do not meet the temporal representation requirements identified in the Section 6.1.5.3 of the Policy. That section states that "[i]f the majority of samples were collected on a single day..., the data shall not be used as the primary data set supporting the listing." Both of the samples were taken on the same day and therefore do not meet the temporal representation guidelines.

Delaying the listing at this time will not cause a delay in the implementation of the TMDL. The SWRCB has scheduled the San Joaquin River Mercury TMDL Project for completion in 2020. The lower Merced River mercury TMDL has no scheduled completion date according to Table 9 of the Staff Report for revising the 303(d)

list. The SWRCB can proceed with the San Joaquin River Mercury TMDL Project while additional and more representative data can be collected from the lower Merced River.

The District urges the SWRCB to not list the lower Merced River at this time until it can make a thorough evaluation of the data and gather additional information.

Respectfully submitted,

MASON, ROBBINS, GNASS AND BROWNING

A handwritten signature in cursive script, appearing to read "Arthur F. Godwin".

ARTHUR F. GODWIN

AFG:jl
cc: Ted Selb

