

Appendix A
Responses to Public Comments

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ABBREVIATIONS, ACRONYMS, AND INITIALISMS USED

§	Section
Basin Plan	The Water Quality Control Plan for the California Regional Water Quality Control Board, Central Valley Region — The Sacramento River Basin and The San Joaquin River Basin
TMDL	Total Maximum Daily Load
NHD	National Hydrography Dataset
Regional Water Board, CRWQCB, and CVRWQCB	California Regional Water Quality Control Board, Central Valley Region
GIS	Geographic Information System(s)
CWA	Clean Water Act
USEPA or U.S. EPA	United States Environmental Protection Agency
Corps	United States Army Corps of Engineers
BMI	Benthic macroinvertebrate
CVCWA	Central Valley Clean Water Association
CFR	Code of Federal Regulations
CA Water Code	California Water Code
NOAA	National Oceanic and Atmospheric Administration
CALFED	CALFED Bay-Delta Program

INTRODUCTION

This document provides Regional Water Board staff's written responses to the public comments received for both the July 2007 draft report titled "Natural Streams and Aquatic Life Within the Central Valley Pesticide Basin Plan Amendment Project Area" and for the August 2009 revised draft version of Table 1, titled "Table 1 Selected Water Bodies and Aquatic Life Within the Central Valley Pesticide Basin Plan Amendment Project Area". Since separate sets of public comments were received for each release, this Response to Comments document is separated into two parts. The first part (Part 1) provides responses to comments received on the July 2007 draft Report (which includes draft Table 1). The second part (Part 2) provides responses to comments received on the August 2009 revised Table 1. Revisions made to the final Report, including revisions to the list of water bodies in Appendix B (formerly Table 1), are reflected in the responses to the relevant comments. For clarity, the numbering of the comments and responses is sequential, continuing from the first part into the second part.

It should be noted that some comments (and their associated responses) address policy issues related to: the extent of Regional Water Board authority and jurisdiction under the USEPA Clean Water Act (CWA) and Porter-Cologne; water bodies addressed in a

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Total Maximum Daily Load (TMDL); Basin Planning and amendment processes; the process of establishing Water Quality Standards; and Beneficial Use designations and application via the tributary statement of the Basin Plan.

JULY 2007 DRAFT REPORT

Comment Letter 1 – Debbie Webster, Central Valley Clean Water Association

COMMENT 1-1: “The Regional Water Board purposes to differentiate ‘natural’ streams from constructed drains, etc. merely based on the name associated with the waterbody. This methodology is largely arbitrary and may mischaracterize the degree to which water bodies have been altered as a result of human activities. The naming conventions historically used for water bodies are not categorically defined and there are no regulatory standards or protocols to guide the naming of water bodies. Consequently, relying on stream names as the sole criterion for determining whether or not each is a ‘natural’ water body is not appropriate and is inadequate to make such determinations.”

RESPONSE TO COMMENT 1-1: The purpose of the methodology for identifying “natural” streams was to create a list of named Central Valley floor creeks, rivers, and sloughs and to exclude those that are obviously minor constructed water bodies such as field-level canals, drains, and ditches. To avoid confusion and clarify the intent of the Report (and the proposed Basin Plan Amendment), staff has deleted the term “natural” from the final staff report.

Exceptions to the exclusion of most constructed (or reconstructed) water bodies are those that are presented in: the Basin Plan (or its associated maps); Reach File 3 (RF3) Geographical Information System (GIS) shapefiles (see Comment 3-10); the Central Valley Water Board proposed 2008/10 Integrated Report (including the proposed Section 303(d) and Section 305(b) water bodies); or the Sacramento-San Joaquin Delta Waterways listed in Appendix 42 of the Basin Plan.

It should be noted that the California Aqueduct was excluded from draft Table 1 because Table II-1 of the Basin Plan specifically indicates that it does not have any designated aquatic life beneficial uses (including Warm Freshwater Habitat [WARM], Cold Freshwater Habitat [COLD], Migration of Aquatic Organisms [MIGR], or Spawning, Reproduction, and/or Early Development (SPWN)).

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COMMENT 1-2: "... the Geographic Information Systems (GIS) layers and maps used to identify streams within the project area provide little, if any, indication of the historic or current quality of each stream..."

RESPONSE TO COMMENT 1-2: Staff Agree. Staff did not attempt to determine past or current stream quality and/or health from the GIS layers.

COMMENT 1-3: "...the inclusion of 'unlabeled' water bodies may result in the inclusion of ditches or canals dug by private landowners to drain their land, thereby overestimating the number of 'natural' streams, in the absence of any additional investigation (e.g., ground-truthing) or other screening criteria."

RESPONSE TO COMMENT 1-3: "Unlabeled" water bodies mentioned in the Report did **not** refer to water bodies that were unnamed. Water bodies referred to as "unlabeled" merely included water bodies such as Auburn Ravine, Miner's Ravine, Oregon Gulch, and Patterson Run that have no "creek", "river", "slough", "canal", "ditch", etc. designation in their name. Staff removed the term "unlabeled" from the Report. The selected water bodies are now listed in Appendix B of the report and do not include ditches or canals dug by private landowners.

COMMENT 1-4: "The Regional Water Board's proposed approach to identifying 'natural' streams deserving coverage under the jurisdiction of the Clean Water Act (CWA), which would be a required element for the 'natural' stream to be included in a Total Maximum Daily Load (TMDL) program, may also be inconsistent with the recent judicial interpretations of what constitutes 'waters of the United States.' Federal CWA jurisdiction applies only 'waters of the United States.' Because TMDLs are part of the CWA, it follows that listing of impairments, which triggers the requirement for TMDLs, may only occur on waterbodies that are considered to fit within the definition of 'waters of the United States.' The definition of what constitutes 'waters of the United States' as defined in federal regulations has been at the center of much judicial scrutiny over the last several years. Most recently, the United States Supreme Court took up the issue in consolidated cases of *Rapanos v. United States* and *Carabell v. United State*. (*Rapanos v. United States* (2006) 126 S. Ct. 2208.)

"Subsequent to the Supreme Court's decision, the United State Environmental Protection Agency (USEPA) and United States Army Corps of Engineers (Corps) issued joint guidance to regions and districts, respectively, regarding jurisdiction over waters of the United States under the CWA. The joint guidance as issued by the USEPA and the Corps does not determine jurisdiction based on the name of a water body but by its characteristics. It would behoove the Regional Water Board to follow suit and makes it determination based, at the very least, on the USEPA and Corps guidance instead of the use of a name. Identifying a water

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body as worthy for inclusion in future possible TMDL activities by the simple presence or absence of 'creek,' 'river,' or 'slough' in its name largely ignores this significant recent guidance and the gravity of the ongoing national debate pertaining to CWA jurisdiction."

The Regional Water Board should follow the joint guidance of the US Environmental Protection Agency (USEPA) and US Army Corps of Engineers (Corps) to determine jurisdiction over "waters of the United States."

RESPONSE TO COMMENT 1-4: Regional Water Board staff does not believe that any of the selected water bodies are outside of Clean Water Act jurisdiction. Moreover, in addition to Clean Water Act authority, the Regional Water Board has Porter-Cologne authority (California Water Code, Division 7) to adopt implementation programs to achieve water quality objectives. Porter-Cologne authority gives the State and Regional Water Boards jurisdiction over "waters of the state [which] means any surface water or groundwater, including saline waters, within the boundaries of the state" (California Water Code §13050).

COMMENT 1-5: "The Draft Staff Report concludes that, based on readily available documents summarizing aquatic community surveys in numerous project area streams, aquatic life exists within all of the 'natural' streams evaluated. This conclusion appears to be based entirely on the presence or absence of aquatic life. The specific information used to delineate the 'presence' of aquatic life is not defined in the Draft Staff Report, but presumably consists of the documentation of one or more benthic macroinvertebrate (BMI) and/or fish specimens occurring in a water body, as reported in cited studies. CVCWA believes that this approach is too coarse to be of true utility given the ubiquitous nature of BMIs and their ability to inhabit virtually any available surface water (e.g., mosquito and/or midge larvae in roadside ditches that temporarily hold water). Aquatic life exists in constructed drains and canals as well as 'natural' water bodies. Hence this 'aquatic-life-present' criterion does not appear to have any true utility in identifying 'natural' streams."

RESPONSE TO COMMENT 1-5: Staff recognizes the presence of aquatic life in "constructed drains and canals as well as 'natural' water bodies". The Report does not make the claim that a water body is "natural" because of the presence of aquatic life. Staff reviewed twelve studies for information that indicates the presence, or potential presence, of aquatic life in order to determine whether aquatic life beneficial uses were appropriate in a subset of the list of named water bodies (Appendix B). This was clarified in the final Report, which will be released to the public along with this Response to Comments document, and the term "natural" was removed. See, also, Response to Comment 1-1.

We do not have any information suggesting that, for the water bodies listed in Appendix B of the Report, the assignment of the WARM and/or COLD beneficial uses is

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inappropriate based on the tributary statement in the Basin Plan. Absent such data, the Clean Water Act presumes that “fishable” uses (such as WARM and COLD) exist. (WQO 2005-0004, p. 6, citing *Idaho Mining Assoc., Inc. v. Browner* (D. Idaho 2000) 90 F.Supp.2d 1078, 1087-1092; see 40 C.F.R. § 131.10(j)(1).)

COMMENT 1-6: “A modification of such a criterion [see Comment 1-5] to look at community structure or presence of multiple trophic levels of organisms (e.g., algae/aquatic plants; invertebrates; and fish) may, in combination with other classification criteria, result in a defensible and appropriate approach.”

RESPONSE TO COMMENT 1-6: As discussed in the final Report, aquatic life beneficial uses are already designated for all the water bodies under discussion in the Report. The purpose of the Report is to evaluate whether there was information to suggest that any of these designations were inappropriate. Determinations that the designated uses for a specific water body are inappropriate would require special studies addressing the factors specified in 40 CFR §131.10(g). Regional Water Board staff believes that the approach used is a reasonable approach to take to determine whether the tributary statement within the Basin Plan is inappropriate for any the selected water bodies.

COMMENT 1-7: “Furthermore, CVCWA contends that such an approach for designating aquatic life uses in these ‘natural’ streams is contrary to state policy and federal regulations governing the establishment of water quality standards. ‘..W[ater quality standards] should, **wherever attainable**, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in an on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in an on the water, and agricultural, industrial and other purposes including navigation.” (40 CFR §130.3, *emphasis added*.) Thus, this regulation indicates that water quality standards should be set for ‘attainable’ uses and not be established for those that are not attainable. The mere presence of ‘aquatic life’ does not necessarily indicate if the use is attainable in the stream over time. Also the Regional Water Board is required to regulate ‘...to attain the highest water quality which is reasonable, considering all demands being made and to be on those waters...” (CA Water Code §13000.) It does not appear from the staff report that any of these considerations were included in the Regional Water Board staff’s evaluation. Before proceeding forward with any Basin Plan Amendment relative to the information in this staff report, CVCWA encourages the Regional Water Board to re-evaluate its proposed designations with the state and federal policies in mind.”

RESPONSE TO COMMENT 1-7: Within the Report, staff is describing information that supports as appropriate the assignment (based on the tributary statement in the Basin Plan) of aquatic life beneficial uses to a specific list of named water bodies; staff is not

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designating or de-designating these uses, and will clarify this in the final Report. See Response to Comment 1-6.

Comment Letter 2a – Jacqueline L. McDonald, Somach, Simmons & Dunn, on behalf of the California Rice Commission and the Sacramento Valley Water Quality Coalition

COMMENT 2-1: “As a preliminary matter, the Sacramento Coalitions maintain that undertaking the Pesticide Basin Plan amendment process is inappropriate at this time. The State of California has implemented several programs to address pesticide discharges and the proposed Basin Plan amendment process will duplicate many of those efforts.

“For example, the Regional Board and the agricultural community currently devote significant resources to the Irrigated Lands Program, in accordance with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Resolution No. R5-2006-0053. The Irrigated Lands Program involves a comprehensive effort by agricultural dischargers to sample, monitor, and analyze surface water discharges, including pesticides, from irrigated lands. Similarly, the rice industry has participated in the Rice Pesticide Program for over twenty years. Through the Rice Pesticide Program, the California Rice Commission coordinates sampling and monitoring of rice pesticides during the pesticide use season. Further, the Regional Board continues to carry out other ongoing efforts related to pesticides, such as the development of TMDLs for diazinon and chlorpyrifos and the toxic hotspots program.

“The Regional Board staff has not demonstrated the need for yet another, separate program to evaluate pesticide discharges. The Irrigated Lands Program, along with the Rice Pesticide Program and the various other efforts underway, sufficiently address pesticide discharges.”

RESPONSE TO COMMENT 2-1: This comment was addressed in “Responses to Comments on the Scope of a Proposed Basin Plan Amendment for the Control of Pesticide Discharges in the Sacramento and San Joaquin River Basins” as Response to Comment 1-2 (Karkoski *et al.*, 2006), as described below:

“Pesticides are applied for a variety of purposes in residential, commercial, industrial, transportation, and agricultural settings. Although the [Irrigated Lands Program] ILP will provide a great deal of valuable information regarding pesticide discharges, the ILP will not address these other potential sources. The Basin Plan Amendment will address both urban and agricultural sources of pesticides. In addition, it is anticipated that the Amendment will establish water quality objectives and a compliance time frame. These new objectives and compliance

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schedules should support ongoing efforts to address pesticide discharges from agricultural and urban areas, rather than duplicate those efforts.”

“The Regional Water Board’s recent Basin Plan Amendments addressing diazinon and chlorpyrifos demonstrate that historic use of those pesticides was not limited to irrigated agriculture. The limited environmental data on pyrethroid insecticides clearly indicates their presence in both agricultural and urban settings (Weston *et al.* 2004; Amweg *et al.* 2006). This information suggests that an effort focused solely on discharges under the Irrigated Lands Program could miss potentially significant sources.”

“In addition, the scope of this Basin Plan Amendment will include pesticides that are on the Clean Water Act Section 303(d) list. Those pesticides have already been identified as causing non-attainment of water quality standards. In accordance with the Clean Water Act, Total Maximum Daily Loads (TMDLs) must be adopted for those water bodies and pesticides. In California, TMDLs are generally established through Basin Plan Amendments.”

“In the [Basin Plan Amendment] staff report, Regional Water Board staff will include additional information explaining the basis for the proposed Basin Plan Amendment. The staff report will also discuss the anticipated roles and responsibilities of the Regional Water Board programs that will be involved in implementing the Amendment. “

Work on pesticide Basin Plan Amendments and TMDLs will be closely coordinated with ongoing work that is part of the Irrigated Lands (Regulatory) Program.

COMMENT 2-2: “In the event the Regional Board continues to pursue these various separate programs [see Comment 2-1], the Regional Board must ensure that the programs coordinate with one another to create maximum efficiency and minimize redundancy and inconsistencies.”

RESPONSE TO COMMENT 2-2: Staff will continue to coordinate within the various Regional Water Board programs.

COMMENT 2-3: “The Aquatic Life Report operates on the assumption that the Pesticide Basin Planning effort should focus only on ‘natural’ streams that support aquatic life, and not on constructed conveyances. The Sacramento Valley Coalitions concur with the notion of generally excluding constructed drains and artificial or man-made water conveyance systems from the Basin Planning effort.”

RESPONSE TO COMMENT 2-3: The comment is noted. While staff is not focusing on all constructed conveyances at this time, some are included because they are specified

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by name within supplemental information sources that are described in Response to Comment 1-1. In addition, it should be noted that constructed conveyances such as Colusa Basin Drain, Delta-Mendota Canal, Shasta Lake, Sutter Bypass, and Whiskeytown Reservoir, have designated aquatic life beneficial uses (WARM and/or COLD Freshwater Habitat) specifically listed within the Basin Plan in Table II-1.

COMMENT 2-4: "...the underlying principle of identifying 'natural' streams with the Project area 'by name' is problematic... The Aquatic Life report arbitrarily applies water body names as an indicator of whether a stream has 'natural' characteristics. No regulations or protocols have guided the historic practice of naming water bodies in the Basin Planning Project area."

RESPONSE TO COMMENT 2-4: See Response to Comment 1-1.

COMMENT 2-5: "...the Aquatic Life Report arbitrarily characterized any unnamed water bodies as 'natural streams' without providing any data or information to suggest that the unnamed streams are in fact 'natural' water bodies. The Aquatic Life Report significantly overestimates the number of natural streams by including all unnamed water bodies without further, site-specific investigation or consideration of other factors on a case-by-case basis."

RESPONSE TO COMMENT 2-5: See Response to Comment 1-3, noting that the terms "unnamed" and "unlabeled" were incorrectly used synonymously by the commenters.

COMMENT 2-6: "This arbitrary selection [by name] of natural water bodies in the Aquatic Life report may inappropriately lead to the evaluation of TMDLs for water bodies that simply do *not* fall within the jurisdiction of the Clean Water Act, 33 U.S.C. §§ 1251 et seq... The Regional Board does not have authority to establish TMDLs (pursuant to section 303 of the Clean Water Act) for water bodies that are beyond the jurisdiction of the Clean Water Act. Unlike the Aquatic Life Report, the United States Army Corps of Engineers and the United States Environmental Protection Agency do not base the extent of the Clean Water Act jurisdiction on the names of water bodies. Rather, the federal agencies consider specific water body characteristics. Upon consideration of the physical and hydrologic characteristics of unnamed streams and streams with "natural" – sounding names, it may become apparent that certain of these water bodies fall outside the Clean Water Act jurisdiction. For example," [some water bodies with a "natural" sounding name, such as swales or erosional features may fall outside of the Clean Water Act jurisdiction].

RESPONSE TO COMMENT 2-6: See Response to Comment 1-4.

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COMMENT 2-7: “Thus, the Sacramento Valley Coalitions respectfully urge the Regional Board to further scrutinize water bodies defined in the Aquatic Life Report as ‘natural’ streams through site-specific investigation...”

RESPONSE TO COMMENT 2-7: Staff has removed the term “natural”, or changed it to “selected”, in the final Report, as described in Response to Comments 1-1 and 1-5. Staff believes that the final Report will be adequate to select readily identifiable waterbodies and to review aquatic life beneficial uses.

COMMENT 2-8: “Mere reliance on the Aquatic Life Report to designate aquatic life beneficial uses for the identified natural streams in the Basin Planning Project area is insufficient and unlawful. In order to designate aquatic life beneficial uses to the natural streams within the Basin Planning Project area, the Regional Board must adhere to the legislative directives requiring a balanced and reasonable approach. In designating aquatic life beneficial uses, the Regional Board should analyze site-specific information to determine (beyond just mere presence of some aquatic life): (1) the viability of aquatic life uses over time; (2) the natural and/or historic characteristics of the water body; (3) hydrologic characteristics of the water body; and (4) presence of multiple levels of aquatic life.”

RESPONSE TO COMMENT 2-8: See Response to Comments 1-5 and 1-7.

Comment Letter 2b – Summer Bundy, CH2M HILL and John Dickey, NewFields Agricultural and Environmental Resources, on behalf of the California Rice Commission and the Sacramento Valley Water Quality Coalition

COMMENT 3-1: [This question is referring to the Central Valley Pesticide Basin Plan Amendment Fact Sheet (CRWQCB, 2006a).] **“The question, in the future, will be what level of water quality is going to be required to ‘fully support aquatic life’ and if this requirement will be imposed on all ‘natural waterbodies’ equally, including those that are effluent dominated.** At face value, it appears that the intention of the CVRWQCB staff is to apply ‘numeric metrics’ developed as part of the Pesticide Basin Plan Amendment process, to all ‘natural waterbodies’ equally.

“The mere presence of aquatic life at sites identified in the literature indicates that a level of water quality supportive of some benthic or fish beneficial uses is achieved, or was achieved at the time of sampling. While it is recognized that most channels with flowing water will support a detectable population of benthos (thus making it a ‘natural waterbody’ per the methodology employed in the

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report), a question remains over whether it will be appropriate to require that water quality within effluent dominated streams be such that the **most sensitive laboratory test species** be 'fully' supported within the waterbody."

RESPONSE TO COMMENT 3-1: The first part of this comment, referring to future requirements, is outside the scope of the Report and will be addressed during the Central Valley Pesticide Basin Plan Amendment process. The part of the question dealing with natural waters is addressed in Response to Comment 1-1.

COMMENT 3-2: "A further consideration is the feasibility of achieving the level of biological function that is implied for some 'natural' water bodies in this analysis. The methodology employed is quite open to inclusion of waterways that are both manmade, and that have never supported a 'natural' community of significant quality, since:

- No determination of historic capacity to support any particular quality of habitat is made or required to be made, and
- Manmade facilities are included except when their names suggest that they have a specific economic use."

RESPONSE TO COMMENT 3-2: See Response to Comment 1-1. The Report does not imply any level of biological function. The final Report comes to the conclusions that, for the water bodies that we evaluated that had readily available information, aquatic life beneficial uses are appropriate, and that we did not have any information to suggest that the other water bodies (the ones that did not have readily available information) should not have the same aquatic life uses.

COMMENT 3-3: "Water bodies thus identified [using the methodology outlined in the report] would likely include a significant number that, with any practicable level of restriction and protection, could never provide the habitat quality associated with their designated beneficial uses. This, in turn, could lead regulators and coalitions to ever more restrictive decisions in pursuit of habitat conditions that are not achievable, even in the absence of agriculture."

RESPONSE TO COMMENT 3-3: The achievability of water quality objectives will be addressed when adopting objectives, which will be described in the Basin Plan Amendment staff report. See Response to Comment 1-6.

COMMENT 3-4: "Of particular concern with lab test species is the use of the *Selenastrum* algae toxicity test. Aquatic toxicity testing performed by both the

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CRC and the CVRWQCB/UC Davis has shown *Selenastrum* reductions. To date, Toxicity Identification Evaluations and pesticide chemistry analyses have not been able to determine the cause of the reductions. Use of the *Selenastrum* test species may be of questionable value moving forward. Further, it may be that algal populations can be supported within waterbodies while water quality exceeds that which results in observable *Selenastrum* reduction.

“The appropriateness of the use of *Selenastrum* should be explored in the process of developing the numeric metrics that are to be proposed as part of the Basin Plan Amendment. At question is whether other algal communities could serve the ecosystem function associated with achievable, reasonable beneficial uses.”

RESPONSE TO COMMENT 3-4: This comment refers to other work being performed by Regional Water Board staff as part of the over-arching Central Valley Pesticide Basin Plan Amendment. This comment will be addressed as part of the Water Quality Criteria Method Development process for the Central Valley Pesticide Basin Plan Amendment.

COMMENT 3-5: “Where SPWN and MIGR beneficial uses are proposed, seasonal designations may be appropriate. Waterbody-specific information should be developed, taking into consideration the spatial and temporal patterns of salmonid life stages.”

RESPONSE TO COMMENT 3-5: The Report is not proposing any new beneficial use designations. Beneficial uses for the selected water bodies are already designated as they are assigned by the Basin Plan tributary statement. No new designations are being made within the Report, including SPWN and MIGR, although aquatic life beneficial uses were reviewed for applicability of the selected water bodies. This is clarified in the final Report, which concludes that it is reasonable to assume that aquatic life beneficial uses are appropriate for all the selected water bodies.

COMMENT 3-6: “Where the existence of [SPWN and MIGR] beneficial uses forms the basis of a proposed designation, the establishment of the numeric metric should rely on literature values that are protective of the life stages (where the effects concentration values for these species are greater than the lowest effects levels for all species).”

RESPONSE TO COMMENT 3-6: Comment noted.

COMMENT 3-7: “We noted that the stated scope of the document applies to pesticides. Care should be taken to ensure that COLD Beneficial Uses are not

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adopted for effluent dominated waterbodies that consistently exhibit warm water temperatures throughout the summer months. Designation of COLD Beneficial Uses brings with it dissolved oxygen standards that may not be achievable at many sites during the hot summer months.”

RESPONSE TO COMMENT 3-7: The Report is not adopting or de-designating any beneficial uses or dissolved oxygen standards. See, also, Response to Comments 1-7 and 3-6.

COMMENT 3-8: “During the main irrigation and drainage season (spring-summer-fall), many waterbodies within the study area are effluent dominated, meaning that their flows are primarily the result of agricultural return flows. State Water Resources Control Board guidance developed with input of the Nonpoint Source Technical Advisory Committee as part of the Inland Surface Waters Plan effort made a clear designation for effluent dominated waterbodies.

“In the ‘natural streams’ report tables of waterbodies, a column should be developed that indicates whether waterbodies are seasonally effluent dominated. Such a designation would provide information that could in the future be utilized to develop different classes of water quality objectives for the protection of existing beneficial uses.”

RESPONSE TO COMMENT 3-8: In regards to the Inland Surface Waters Plan (ISWP), it was vacated by the Court in 1994 (see Water Quality Control Cases, Judicial Council Coordination Proceeding No. JC2610, Sacramento County Superior Court). None of the provisions of the ISWP apply in California and the guidance provided for development of the ISWP is not applicable to this project.

Defining whether each water body is effluent-dominated or agriculturally-dominated (for which there is no legal definition) is outside of the scope of this Project. However, staff will consider attainability in adopting water quality objectives for the Basin Plan Amendment.

COMMENT 3-9: “The process utilized lacks information that would aid in the development of a prioritized list of sites and/or waterbodies for implementation. Rather, all waterbodies are treated equally, in that they are all deemed ‘natural waterbodies’. In reality, some waterbodies/sites have greater ecological significance and value due to their size location, and/or potential quality. Understanding the priorities with respect to restoration/protection of beneficial uses, particularly as they relate to endangered species protection, could provide critical information for the development of cost-effective implementation programs. CVRWQCB coordination with the Department of Fish and Game,

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NOAA Fisheries, and CALFED would help establish ecosystem restoration priorities.”

RESPONSE TO COMMENT 3-9: As discussed in the final Report, aquatic life beneficial uses are already designated for all the water bodies under discussion in the Report. The purpose of the Report is to evaluate whether there was information to suggest that any of these designations were inappropriate. Determining that the designated uses for a specific water body are inappropriate would require special studies addressing the factors in 40 CFR §131.10(g). Regional Water Board staff believes that the approach they used is reasonable. Decisions about dividing the water bodies into subsets for purposes of prioritizing which ones should have control programs developed for them will be made at a later date. Some prioritizing of named water bodies was already done for the Report by eliminating from consideration minor water bodies that were called “ditch” or “drain” (thus excluding many minor constructed waterways from the scope of the Report).

COMMENT 3-10: “The report relies on the USEPA Reach File 3. An additional shapefile that is often employed in hydrology analysis is the State’s hydrography data file [Available as the National Hydrography Dataset via the California Spatial Information Library (<http://gis.ca.gov/BrowseCatalog.epl>)]. This file, while containing the same line data (digitized USGS streams), also contains several fields that should be explored for use in the designation of ‘natural waterbodies’. Specifically, the attribute column MINOR-1 specifies descriptive subcategories for the hydrologic feature. Among these are stream (412), ditch or canal (414), aqueduct (415), intermittent (610). These data attributes should also be employed to screen ‘natural waterbodies’ by eliminating those with the ‘ditch or canal’ attribute. Such a designation in the named feature should be cause to exclude it from the list, per criteria given in the report.”

RESPONSE TO COMMENT 3-10: Regional Water Board staff was not able to locate a MINOR-1 attribute column describing hydrologic features in the National Hydrography Dataset (NHD). Rather, the NHD has a similar attribute column, the “FCODE” attribute, which differentiates features into categories such as CANAL/DITCH, COASTLINE, ARTIFICIAL PATH, PIPELINE, STREAM/RIVER, CONNECTIONS, etc. Some inaccuracies were found; some sections of the San Joaquin River were labeled “CONNECTIONS”. Therefore, Regional Water Board staff will continue to use the methodology described in the Report.

See Response to Comment 1-1 regarding the use of the term “natural”. As also described in that Response, the list of named water bodies (now in Appendix B of the

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Report) was supplemented with named water bodies identified from the NHD GIS shapefiles described by the commenter.

COMMENT 3-11: “For stakeholders to be afforded an opportunity to comment on the entirety of the proposed Pesticides Basin Plan Amendment, the ‘natural streams’ report should not be considered final until the CVRWQCB’s adoption of the Basin Plan Amendment.”

RESPONSE TO COMMENT 3-11: This Report has been finalized in order to move towards project completion. There will be subsequent opportunity to comment on the use and interpretation of this report, including the list of waterbodies to be addressed, during the public process for the adoption of the Basin Plan Amendment and the supporting Staff Report.

COMMENT 3-12: “The Executive Summary is very brief and written more as an abstract. It could be expanded upon to provide more informed content within the context of the Pesticides Basin Plan Amendment that is being developed.”

RESPONSE TO COMMENT 3-12: The Executive Summary was expanded as suggested by the commenter.

COMMENT 3-13: “Maps at [the scale provided in the report] can only provide very limited useful information [for use in a newspaper] on this topic to the reader. The maps show the entire Sacramento Valley on one 8/5” x 11” map without inclusion of stream name labels. The maps could be revised to show the intended information more clearly, simply by enlarging them or dividing the study area into subregions, and using these subdivisions for display (and perhaps analytical) purposes.”

RESPONSE TO COMMENT 3-13: The maps within the Report were intended only to provide an overview of water body locations. Additional geographical information describing the location of each individual water body is provided in Appendix B of the Report.

Comment Letter 3 – Claus Suverkropp, Larry Walker Associates <provided with comments for the Water Quality Criteria Derivation Methodology Report>

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COMMENT 4-1: "The Aquatic Life Use Assessment is essentially based on evidence of presence/absence of any aquatic life. The main inputs for this evaluation were the stream names, bioassessment data from multiple sources, and critical salmonid habitat data from NOAA. The outcome of this assessment is that any natural stream with any evidence of any current or past aquatic life will be regulated based on Aquatic Life Beneficial Uses (e.g., COLD, WARM, migration, spawning). More than 700 named "Natural Streams" were identified in the Central Valley based primarily on naming conventions (e.g., river, creek, and slough vs. drain or canal). The evaluation is intended to exclude constructed agricultural drains, primarily because this was outside of the scope for the project. Because stream names were the only basis used to identify natural streams, Water Board staff should verify that the "sloughs" are natural streams, because 'slough' has sometimes been applied to name water bodies constructed for drainage."

RESPONSE TO COMMENT 4-1: See Response to Comments 1-1, 1-5, 1.7, and 5-1 through 16-7. Stakeholders have been encouraged during two cycles of public review to inform staff of any water bodies they believe should not be included in the draft "Table 1" or the "revised Table 1" (now Appendix B).

AUGUST 2009 REVISED TABLE 1

Comment Letter 4 – Roberta Firoved, California Rice Commission

COMMENT 5-1: "Please remind me what D means in the Site-Specific Data column. I remember that C=Chinook and S=Steelhead."

RESPONSE TO COMMENT 5-1: Water bodies identified as having readily available "Site-Specific Data" indicating the presence of aquatic species were indicated with a "D" value (short for "Data"). The list of named water bodies (now Appendix B) was revised to include a description of each such code value. The value "D" was replaced by either "B" (for benthic macroinvertebrates), or "F" (for fish), if studies indicate the presence of either in the particular water body.

COMMENT 5-2: "Some confusion exists as to the intent, use and application of the [revised Table 1 water bodies] list because development is bundled with the Central Valley Pesticide TMDL and Basin Plan Amendment. Some have assumed the list directly relates to the need for Pesticide TMDLs and that the water bodies on the list are impaired for pesticides. However, it is our understanding this is not true and that the list includes a number of water bodies

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not listed as impaired for pesticides, or any other pollutant. To avoid confusion on this issue, we encourage the CVRWQCB to clearly identify the use and context of the list with respect to the Pesticide TMDL, which is being prepared concurrently."

RESPONSE TO COMMENT 5-2: The final Report contains explanatory text to clarify the intended use of the list of named water bodies in Appendix B (i.e., that they will be considered during the over-arching Central Valley Pesticide Basin Plan Amendment). As described by the commenter, the final Report indicates that the list of water bodies in Appendix B does not imply that any of the water bodies are *necessarily* impaired for pesticides (or any other pollutant).

COMMENT 5-3: "In addition, the CRC questions the underlying assumption that the water bodies identified on the list as designated with beneficial uses via the CVRWQCB application of the tributary footnote. This assumption is not consistent with the administrative record for the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan). The order indicates the CVRWQCB intent to identify and designate beneficial uses for the vast majority of water bodies in the Central Valley as part of the triennial review process, and as more information becomes available."

RESPONSE TO COMMENT 5-3: The Report concludes that, for the water bodies we evaluated that have readily available aquatic life information, aquatic life beneficial uses are appropriate. This observation does not designate any beneficial uses to these water bodies. Therefore, the Report (including Appendix B) is not constrained by, nor does it supplant, the Triennial Review process.

COMMENT 5-4: "We have concerns with the underlying assumption that the listed water bodies received designation via the tributary footnote, and would like to work with you on the draft list as the basis for further water body evaluation. From this type of an evaluation, the CVRWQCB could develop a list that is robust and reflective of existing and probable future beneficial uses. It is our desire to lessen the continuing questions and criticisms associated with application of various water quality objectives to these types of water bodies. In particular, our concern lies with the application of water quality objectives for the protection of aquatic organisms in agricultural drains throughout the Central Valley. Agricultural drains are not waters of the State and are therefore not subject to water quality standards. Further, we are concerned with the approach in developing the list whereby streams with the name, "river", "creek", or "slough" automatically assumed a natural water body even though many may be agricultural drains."

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RESPONSE TO COMMENT 5-4: See Responses to Comments 1-1 and 1-4.

COMMENT 5-5: "In addition, we are concerned with the CVRWQCB report, Natural Streams and Aquatic Life within the Central Valley Pesticide Basin Plan Amendment Project Area – Public Draft. The CRC is familiar with several of the studies cited in the report and realize that the full context of the publication is not reflected in the example, which raises concerns with adherence to the water body assessment in producing a TMDL. In addition, the report may prematurely rely on information and data from the recent Biological Opinions prepared by the U.S. National Marine Fisheries Service as a consultation requirement between the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency for steelhead and spring-run Chinook salmon. It is our understanding that the Biological Opinions are currently the subject of debate and scrutiny. Until the Biological Opinions, and the information and data contained in them are fully vetted and confirmed, the CVRWQCB should avoid using information for the purposes identified in the public draft report."

RESPONSE TO COMMENT 5-5: We appreciate the commenter's concerns with the reliability and applicability of several references cited in the Report. We encourage the California Rice Commission (CRC), and other stakeholders, to provide us with any accurate information relevant to beneficial use designations during preparation of the Project Basin Plan Amendment staff report. We also encourage the commenter (and all stakeholders) to provide relevant and accurate water body assessment information during development of the California Integrated Report (see Response to Comment 5-4). However, neither the California Integrated Report, nor the Report addressed by these comments and responses, designates any beneficial uses to any water body (see Response to Comment 3-5).

COMMENT 5-6: "We distributed the water body list to a subset of the CRC Industry Affairs Committee in order to provide specific identification of the individual water bodies. You will find brief comments from our membership incorporated in the attached Excel version of the water body list. The CRC hopes that the comments provide adequate feedback to initiate further dialog on the process for developing the list. In the meantime, CRC intends to refrain from investing additional resources until there is a mutual understanding and agreement on a collaborative process for moving forward."

RESPONSE TO COMMENT 5-6: Staff reviewed and considered the comments provided by the commenter in the version of the revised Table 1 they returned. Staff intends to maintain an open and collaborative process during the Basin Plan

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Amendment process and will continue to provide opportunities for stakeholder involvement.

Comment Letter 5 - Francis Brewster, Santa Clara Valley Water District

COMMENT 6-1: "I noticed the list includes only presence of central valley spring-run Chinook and central valley steelhead. Why are other special status species not also included?"

RESPONSE TO COMMENT 6-1: The purpose of the Report was not to document all present special status species in the subject waterbodies, but to document the presence of aquatic life. The salmonid data was a readily available information source used for that purpose. We did not update the original literature search for special status aquatic life occurrences, as described in Section III of the Draft Report. We have not been informed of any other sources of readily available, water body-specific, special-status species information. We would be interested in obtaining information that indicates water bodies associated with special status species or with other biological indicators.

Comment Letter 6 - Christine Mai, Shasta Trinity National Forest

COMMENT 7-1: "One watershed area that drains from our forest, Beegum Cr is included in this plan amendment. Is this area selected based on geography / i.e. draining into the Central Valley, or is it perceived that this is an impaired area that requires special study and protection to prevent listing as an impaired waterbody. The headwaters are primarily on USFS land and we do not use herbicide/pesticide and haven't for many many years. If it is considered to be an area with a high risk for pesticide herbicide contamination I will need to respond to the amendment. If not, than it really shouldn't make any difference."

RESPONSE TO COMMENT 7-1: Many of the water bodies shown in the revised Table 1 (now Appendix B), including Beegum Creek (and its North, South, and Middle forks), are included because they are "based on geography" (they drain directly into the Central Valley; i.e., there are no major dams below them), and they are indicated in one, or more, of the data sources described in Section 2 of the final Report. For most of the water bodies shown in Appendix B, we do not have additional information that would indicate whether these water bodies (e.g., Beegum Creek and its tributaries) are in "an

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impaired area or that requires special study and protection" or are "considered to be an area with high risk for pesticide contamination." See, also, Response to Comment 5-2.

Comment Letter 7 - Bruce Houdesheldt, Northern California Water Association

COMMENT 8-1: "Is it possible to get the list in an Excel format...so we can sort by county rather than have to look all the way through it?"

RESPONSE TO COMMENT 8-1: An Excel version (and the original PDF version) of the Table 1 Water Bodies List was distributed to all Central Valley Pesticides Basin Plan Amendment Project email notification subscribers, and it was posted to our Project's website

(http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/central_valley_pesticides/aquatic_life/index.shtml), on 27 August 2009.

COMMENT 8-2: "It appears that a waterbody can be listed more than once, because it came from a different source document, is that in fact the case? For instance, Hall Creek, SW of Corning, 504, 100K, Sacramento; Hall Creek (Middle Fork), SW of Corning, 504, RF3, Sacramento; Hall Creek (North Fork), SW of Corning, 504, 100K, Sacramento; Hall Creek (South Fork), SW of Corning, 504, 100K, Sacramento. In other instances it appears the same waterbody is list differently, for example Cold Spring, W of Corning, 523, RF3, Sacramento; Cold Spring Creek, W of Corning, 523, 100K, Sacramento. Was the list purged to address potential duplicate listing? If not, how do you want to address this?...in some instances [it appears that some water bodies are] just listed twice...Elkhorn Creek W of Red Bluff 524 100K Sacramento [and] Elkhorn Creek W of Red Bluff 524 100K Sacramento."

RESPONSE TO COMMENT 8-2: All of the water bodies in the revised Table 1 (now Appendix B) were reviewed and located on one, or more, maps to identify duplicate entries, which were removed. In addition, geographical information for water bodies with similar names, but unique locations, was added to clarify the unique locations. Water body forks or branches are listed separately if they are distinctly identified in the information source files (e.g., the mainstem and forks of "Hall Creek").

COMMENT 8-3: "...what [is] the significance of listing the waterbody...if there is no agriculture nearby? Some of the waterbodies are in the Coast Range"

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RESPONSE TO COMMENT 8-3: The water bodies included in Appendix B are located within the Project area, as described in Section 1 of the Report, and are identified from one, or more, of the information sources described in Section 2. Water bodies were not excluded from Appendix B based on other general geographic considerations. See, also, Response to Comment 1-1.

Comment Letter 8 - Jeff Brandt, Department of Fish and Game

COMMENT 9-1: "Do you have a website where I can review the macro invertebrate and fish studies noted in the basin plan? I'd like to get copies of some of the reports--and don't know which ones would be useful for the southern part of the state."

RESPONSE TO COMMENT 9-1: The requested study reports were provided to the Commenter.

Comment Letter 9 - Walter P. Ward, Modesto Irrigation District

COMMENT 10-1: "Why are the Modesto Main Canal and Modesto Reservoir listed? What is the basis for this designation? Is there water quality data that supports this? If so, I would like to see the specific information. If not, the listing appears to be arbitrary."

RESPONSE TO COMMENT 10-1: Both Modesto Main Canal and Modesto Reservoir are identified on the Basin Plan map for the San Joaquin Hydrologic Basin Planning Area, they were included in Appendix B. See, also, Responses to Comments 1-1, 3-5, 5-2, 5-3, and 7-1. Water quality was not the basis for the selection of waterbodies.

Comment Letter 10 - Max Stevenson, Yolo County Flood Control & Water Conservation District

COMMENT 11-1: "The Yolo County Flood Control and Water Conservation District covers almost half of western Yolo County. The best general map I know of can be found here:
http://www.norcalwater.org/pdf/SACVALLEY_NCWA_MEMBERS.pdf YCFCWCD is in the lower left.

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As discussed, I reviewed our 2005 test map of the NHD data within the District. I now remember clearly why we abandoned trying to use the NHD as our base waterways map. We even discussed trying to use the NHD as a starting point, and correct it as we went along. We decided it would be much easier to start from scratch, so that is what we did.

The NHD within the District had canals labeled as streams, streams as canals, missing canals, canals and streams in the wrong places (old locations) missing connection points, random sections of "ArtificialPath", and conversely overly detailed in some places with multiple waterways in a mesh network representing field scale ditches. If all these field level ditches were mapped the whole thing would look like a giant spider web."

RESPONSE TO COMMENT 11-1: See Responses to Comments 3-10 and 8-2.

Comment Letter 11 - Anna Rose Ravenwoode, Big Valley Rancheria

COMMENT 12-1: "...Clear Lake has not been included in the list of waterbodies to be studied or incorporated in the referenced document [Central Valley Pesticide TMDL]. Can you inform me of a way to have Clear Lake included, as it has large agricultural areas on all sides of the Lake."

RESPONSE TO COMMENT 12-1: Clear Lake was not included because it was not within the geographic scope of this project during the time this report was developed. Currently, this project is focused, geographically, on the Sacramento and San Joaquin Valleys, below the major reservoirs. This geographic scope was selected to provide focus on the area where the most intense pesticide use and nearly all documented pesticide water quality impairments, occur. If future information on pesticide use or presence indicates the need, additional waterbodies, such as Clear Lake and its tributaries, can be considered in the development of Basin Plan Amendments.

Comment Letter 12 - William Luce, Friant Water Users Authority

COMMENT 13-1: "Table 1 seems to assert that CV steelhead are present and in critical habitat in the San Joaquin River from Friant Dam to Mendota Pool (on page 41). This is incorrect. With respect to Critical Habitat, there is no critical habitat designated in counties south of Merced County (Federal Register / Vol.

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70, No. 170 / Friday, September 2, 2005 / Rules and Regulations, page 52513, Response to Comment 87). With respect to presence, steelhead have only shown up in the San Joaquin River above Mendota Pool in very wet years...one or 2 fish and in maybe 1 in 10 years (Rhonda Reed, National Marine Fisheries Service, Sacramento Area Office, personal communication)."

RESPONSE TO COMMENT 13-1: Staff reviewed the Central Valley steelhead Critical Habitat reference and agrees with the commenter. Table 1 (now Appendix B) was revised accordingly.

COMMENT 13-2: "Central Valley spring-run Chinook salmon have not occupied the San Joaquin River above Mendota Pool for more than half a century and no determination has been made that that part of the river is essential for the conservation of the Evolutionarily Significant Unit of the species. Therefore, that reach of the river is not included in the final critical habitat designation for spring run (Federal Register / Vol. 70, No. 170 / Friday, September 2, 2005 / Rules and Regulations, page 52511, Response to Comment 77)."

RESPONSE TO COMMENT 13-2: Staff reviewed the Central Valley spring-run Chinook salmon Critical Habitat reference and agrees with the commenter. Table 1 (now Appendix B) was revised accordingly.

COMMENT 13-3: "Based on the above, the San Joaquin River (Friant Dam to Mendota Pool) should be removed from Table 1. In addition, using the column heading "Critical Habitat Data" can be misleading for the reasons stated above."

RESPONSE TO COMMENT 13-3: The San Joaquin River (Friant Dam to Mendota Pool) is designated with multiple aquatic life beneficial uses in the Basin Plan. Therefore, it has not been removed from Table 1 (now Appendix B). Information about critical habitat data has been revised. (See Response to Comments 13-1 and 13-2.)

Comment Letter 13 - Dennis W. Westcot, San Joaquin River Group Authority

COMMENT 14-1: "We are unable to locate the Hydrologic Unit listing for the Basin Plan Map (SWRCB, 1986) which is referred to in the listing. Can you give us a web site to find this as we feel several of the listings are in error?"

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RESPONSE TO COMMENT 14-1: Additional information was provided to the Commenter.

COMMENT 14-2: "We want to make comments on the proposed list but have found it impossible because we are unable to access the reach files you utilized in preparing Table 1 - Water Body List. We certainly appreciate the efforts you have made to provide the files to us but we are still unable to access them and complete our comments.

Rather than making negative comments about lack of access to the data utilized in the preparation of Table 1, we would like to arrange with you a time when I can come into your office and view the GIS files you utilized in preparing Table 1 or have you show us how to access the data. I appreciate the suggestion of putting it on a CD but I am not sure if we would not run into the same problem when we try to open the files as you need the GIS Software available to read it or utilize it."

RESPONSE TO COMMENT 14-2: Additional information was provided to the Commenter.

COMMENT 14-3: "The information for the Merced River is inconsistent with NOAA's 2005 designation of critical habitat. The list indicates critical habitat reach below McSwain Reservoir. The boundary designated in NOAA 2005 is 4 miles downstream at Snelling Diversion Dam. The information for the Tuolumne River is also inconsistent with NOAA's 2005 designation of critical habitat. The list indicated critical habitat reach below Don Pedro Reservoir. The boundary designated in NOAA 2005 is further downstream at La Grange Dam. For the Stanislaus River an upstream boundary is not indicated in the list. The NOAA 2005 critical habitat boundary is Goodwin Dam."

RESPONSE TO COMMENT 14-3: Staff reviewed the Critical Habitat reference and agrees with the commenter. Table 1 (now Appendix B) was revised accordingly.

COMMENT 14-4: "In addition, the four (4) reaches of the San Joaquin upstream [sic] from the Merced River confluence (Friant to Mendota, Mendota to Bear Cr, Bear Cr to Mud Slough, Mud Slough to Merced R) that are listed as critical habitat in your Table 1 is also inconsistent with NOAA 2005. The upstream boundary for critical habitat in the SJR is the Merced River confluence. This is supported by the comments of the Friant Water Users Authority to you on Table 1 which stated: With respect to presence, steelhead have only shown up in the San Joaquin River above Mendota Pool in very wet years...one or 2 fish and in

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maybe 1 in 10 years (Rhonda Reed, National Marine Fisheries Service, Sacramento Area Office, personal communication)."

RESPONSE TO COMMENT 14-4: See Response to Comment 13-1.

COMMENT 14-5: "Central Valley spring-run Chinook salmon have not occupied the San Joaquin River above Mendota Pool for more than half a century and no determination has been made that that part of the river is essential for the conservation of the Evolutionarily Significant Unit of the species. Therefore, that reach of the river is not included in the final critical habitat designation for spring run (Federal Register / Vol. 70, No. 170 / Friday, September 2, 2005 / Rules and Regulations, page 52511, response to Comment 77)."

RESPONSE TO COMMENT 14-5: See Response to Comment 13-2.

COMMENT 14-6: "Based on the above [Comments 12-4 and 12-5], the San Joaquin River (Friant Dam to Mendota Pool) should be removed from Table 1. A copy of NOAA's 2005 critical habitat listing is available at <http://www.nwr.noaa.gov/Publications/FR-Notices/2005/upload/70FR52488.pdf>"

RESPONSE TO COMMENT 14-6: See Response to Comment 13-3.

COMMENT 14-7: "In addition to the above, an overall comment is that Table 1 is very difficult, if not impossible, to follow or understand. The Table has 1) listings designated in basins that do not exist, 2) duplicate listings because of the effort to list anything listed on a map, and 3) listings for small tributaries of ephemeral streams that are already listed in the Table through the listing of the main stream."

RESPONSE TO COMMENT 14-7: Regarding the commenter's difficulty understanding Table 1, it is not intended for the list of named water bodies to be a stand-alone document; rather, it is part of the Report in which it is described and presented (now as Appendix B). See Responses to Comments 14-1 and 14-2).

Additional geographical information has been added to Appendix B to clarify water body locations. See, also, Responses to Comments 1-1, 3-13, and 14-1.

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The Report describes the basis for the three “Watersheds” indicated in revised Table 1 (now Appendix B), which the commenter apparently interprets as “basins that do not exist” (see Responses to Comments 1-1 and 7-1).

Regarding “duplicate listings”, see Response to Comment 8-2.

Listing of a tributary is not included through listing of the main stem. The purpose of the list is to specifically name each waterbody, which is why tributaries are specifically named.

COMMENT 14-8: "1. Table 1 uses a subarea called “Delta” but it is unclear whether the Delta means the actual Delta boundaries as defined by the State Water Resources Control Board or it is a Basin Planning Area. In either case, the data in the table is incorrect. First there is no Basin Planning Area called the Delta within the two Basin Plans presently used by the Central Valley Regional Water Quality Control Board or the approved by the State Water Resources Control Board. Second the data in Table 1 are not, in most cases, associated with the Delta. Examples of this are listings for streams near; Amador City (Amador County), NW of Williams (Colusa County), E of Anderson (Shasta County), N of Rumsey (Yolo County), SE of Pollock Pines (El Dorado County), NE of Oakdale (Stanislaus County) and others too numerous to mention. These should all be defined within the Basin Planning basin they are in (Sacramento, San Joaquin or Tulare Lake Basins) or removed from Table 1."

RESPONSE TO COMMENT 14-8: See Response to Comment 14-7.

COMMENT 14-9: "1. Table 1 has designated several water bodies that are already considered water bodies under the designation of the Grassland Marshes. These include: Big Buttonwillow Lake, Big Water Lake, Bass Lake, Dry Lake, Little Buttonwillow Lake, Lower Ruth Lake, Olsen Pond, and Upper Ruth Lake. These should be removed from Table 1 and the listing Grassland Marshes be used to designate that area consistent with the present Basin Plan."

RESPONSE TO COMMENT 14-9: The intent of the Report and Appendix B (formerly “revised Table 1”) is to provide specific water body names, rather than general area names, such as “Grasslands Marshes” (see, also, Response to Comment 14-7).

COMMENT 14-10: “1. Table 1 lists tributaries of small ephemeral streams on the western side of the San Joaquin River Basin that are neither in the agricultural zone or are already covered by the listing of the main ephemeral stream. As a

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result the listing is impossible to use as it lists so many waterbodies that are neither in the agricultural zone or are so small as to be unknown to any user of Table 1."

RESPONSE TO COMMENT 14-10: See Responses to Comments 1-1 and 14-7.

COMMENT 14-11: "Table 1 lists tributaries of small ephemeral streams on the western side of the San Joaquin River Basin that are neither in the agricultural zone or are already covered by the listing of the main ephemeral stream. As a result the listing is impossible to use as it lists so many waterbodies that are neither in the agricultural zone or are so small as to be unknown to any user of Table 1.

The following should be considered for removal from Table 1 as they are covered by other designations: Chileno Creek, Del Puerto Canyon, Del Puerto Creek (North Fork), Falls Creek, Garden Canyon Creek, Garzas Creek (below Oat Gulch), Gasburg Creek, Grayson Drain (at outfall), Grummett Creek, Hartman Creek, Laguna Seca Creek, Little Panoche Creek (South Fork), Lone Tree Creek (Middle Fork), Lone Tree Creek (North Fork), Los Banos Creek (South Fork), Los Banos Creek (North Fork), Mercy Creek (South Fork), Mine Creek, Miner Creek, Orestimba Creek (North Fork), Orestimba Creek (South Fork), Oso Creek, Peach Tree Creek, Pegleg Creek, Piedra Azul Creek, Pinto Creek, Red Creek, Richard Creek, Rincon Creek, Robinson Creek, Sheep Thief Creek, Thorps Creek, Vasquez Creek, and Wildcat Creek."

RESPONSE TO COMMENT 14-11: We removed the following water bodies from Appendix B (formerly Table 1): "Grayson Drain (at outfall)," because it is essentially a pipe discharge; "Gasburg Creek," because it was incorrectly mapped in the GIS source file (NHD 1:24,000 scale); and "Thorps Creek," because it is essentially a very small portion of the Merced River, which is already included in Appendix B. The other water bodies listed by the commenter are retained in Appendix B as they still meet the precept for inclusion (see Responses to Comments 1-1 and 14-7).

Comment Letter 14 - Parry Klassen, East San Joaquin Water Quality Coalition

COMMENT 15-1: "Jones Drain (Location: NE of Livingston) is a proposed water body to be listed with the beneficial use of aquatic life. 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

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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 and recirculated on private property, and it should not be listed in the Table 1 – Water Body List drafted on August 24, 2009."

RESPONSE TO COMMENT 15-1: Based on the information provided by the commenter, we have removed Jones Drain from the list of named water bodies (Appendix B).

COMMENT 15-2: "South Slough (Merced County; Location: W of Merced) is another water body included in Table 1 that has been previously sampled by the ESJWQC. Based on GIS layers, the ESJWQC monitored what it thought was South Slough from July 2006 to September 2008. The Coalition found out that the water body sampled was actually Nealon Lateral which runs parallel to South Slough. Nealon Lateral was constructed to transfer water to agricultural fields and only during extreme storm events does water overflow from Nealon Lateral into South Slough. In addition, the ESJWQC obtained information from the Merced Irrigation District (MID) indicating that both Nealon Lateral and South Slough do not drain to surface waters (Figure 1). Both water bodies have been constructed and manipulated as agricultural source waters and all supply water is utilized by agricultural in that area. Therefore, because South Slough does not drain to surface waters and is only utilized for Nealon Lateral overflow it should not be included in the Table 1 - Water Body List drafted on August 24, 2009."

RESPONSE TO COMMENT 15-2: Based on the information provided by the commenter, we have removed South Slough from the list of named water bodies (Appendix B).

Comment Letter 15 - Debra C. Liebersbach, Turlock Irrigation District

COMMENT 16-1: "Our comments center on two primary issues: 1) establishing beneficial uses to specific water bodies that have not gone through the basin

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planning process, and 2) expansion of aquatic life beneficial uses to manmade water bodies, such as drains and canals."

RESPONSE TO COMMENT 16-1: Responses to specific comments are provided, or referenced, below.

COMMENT 16-2: "Through review of the above referenced Draft Staff Report, and discussions with RWQCB staff at the November 16, 2008 Central Valley Pesticide BPA and TMDL Stakeholder Meeting, it appears as though RWQCB staff is using the Draft Staff Report to assign beneficial uses of water bodies.. Included in the report, is a list (Table 1) RWQCB staff compiled of "natural" water bodies that presumably support aquatic life within the Central Valley. The list is intended to be used to update the Basin Plan, and guide future application of Water Quality Objectives and TMDLs. By specifically listing water bodies that "support aquatic life," the report is in fact stating that the beneficial use exists in each and every water body on the list, without going through the established Basin Plan Amendment process for doing so, including conducting a Beneficial Use Attainability Analysis."

RESPONSE TO COMMENT 16-2: See Responses to Comments 1-4 through 1-7. In addition, determinations that the designated uses for a specific waterbody are inappropriate require special studies addressing the factors specified in 40 CFR §131.10 to de-designate aquatic life beneficial uses already ascribed to the water bodies listed in Appendix B (formerly "Table 1") via the tributary statement in the Basin Plan.

COMMENT 16-3: "Additionally, the reasoning utilized to determine that all water bodies on Table 1 support aquatic life is flawed. Regional Board staff reviewed available literature and field study data for a subset of the water bodies on Table 1 and determined that aquatic life uses were present within the subset. The data reviewed and analyzed appears to be studies of the main rivers and creeks, and not smaller manmade conveyances. Based on this data, Regional Board staff determined that, on Page 10 of the July 2007 Draft Staff Report; "This review of available studies suggests that aquatic life exists within all natural Central Valley streams within the project area." (emphasis added) It cannot be assumed that the subset of water bodies reviewed in the literature and field studies accurately represent all types of water bodies listed in Table 1. Nor can it be assumed that the subset of "natural" water bodies correctly represents the manmade conveyances, including canals and drains, that have also been included in Table 1."

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RESPONSE TO COMMENT 16-3: See Responses to Comments 1-1, 2-3, 3-2, 3-9, and 16-2.

COMMENT 16-4: "Manmade facilities, while they may convey water, are not the same as natural waterways. The inclusion of manmade conveyances in Table 1 is inappropriate. Manmade conveyances are often dry during the non-irrigation season (up to 5 months out of the year). Many times they are concrete lined, and cleaned regularly to ensure proper operation. These facilities would not exist except for the delivery of irrigation water or other activities of people. These are not suitable aquatic habitats and should not be designated as such. Non-natural, manmade facilities should be removed from the list."

RESPONSE TO COMMENT 16-4: See Responses to Comments 1-1, 2-3, 3-2, and 7-1.

COMMENT 16-5: "The current draft of Table 1 includes two manmade conveyances located within the Turlock Irrigation District service area. The first is the Highline Canal, an entirely manmade facility located within Merced County, along TID's eastern boundary. The Highline Canal is designed and operated to convey irrigation water to growers. A significant portion of the canal is concrete lined. It is dry during the majority of the non-irrigation season, with the exception of occasional stormwater flows. It is not appropriate to assume aquatic beneficial uses for this facility. Furthermore, the Highline Canal is included based on an incorrect citation. Table 1 references the "Delta Waterways OP TMDL" as the reason for its inclusion on the list. While there may be a Highline Canal within the Delta watershed, it is located north of Stockton Deep Water Ship Channel. The Highline Canal currently referenced, is located within Merced County. The reference should be corrected. The Highline Canal within the Turlock Irrigation District's boundaries should be removed from the list."

RESPONSE TO COMMENT 16-5: Staff agrees with the commenter that there has been confusion between more than one instances of "Highline Canal". Table 1 (now Appendix B) has been revised to show only the Highline Canal located in Merced County, which is not a minor conveyance, as it is 14 miles long and shows up on the Basin Plan map and the RF3, NHD 100K, and 24K GIS maps.

COMMENT 16-6: "The second manmade conveyance included is the Harding Drain. The Harding Drain is not a natural waterway. It is a constructed facility used to convey a variety of agricultural and urban flows to the San Joaquin River. It is inappropriate to assume aquatic beneficial uses for the Harding Drain without going through the appropriate Basin Plan Amendment Process. The Harding Drain should be removed from the list."

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RESPONSE TO COMMENT 16-6: Staff disagrees with the commenter and considers Harding Drain to be a relatively large water body that conveys water year-round. Additionally, Regional Water Board Order No. R5-2001-0122, prescribing waste discharge requirements for the discharge of treated effluent from the City of Turlock Water Quality Control Facility to the Harding Drain, found that the following beneficial uses are applicable to Harding Drain: Domestic Supply (MUN), Agricultural Supply (AGR), Water Contact (REC-1) and Noncontact Recreation and Esthetic Enjoyment (REC-2), Freshwater Replenishment (FRSH), and Preservation and Enhancement of Fish, Wildlife, and Other Aquatic Resources (WARM, COLD, and WILD). Therefore, Harding Drain has not been removed from the list of named water bodies (Appendix B).

COMMENT 16-7: "It should be noted that removing waterways from Table 1 does not preclude the Regional Board staff from including additional waterways into the Pesticide TMDL process, as appropriate. However, the inclusion would be on a case-by-case basis, and would need to be justified at that point in time. This is a more appropriate approach, given the lack of data documenting beneficial uses for non-natural, manmade waterways."

RESPONSE TO COMMENT 16-7: Staff agrees that the Regional Water Board may include additional water bodies in the Central Valley Pesticide Basin Plan Amendment, as appropriate.

REFERENCES

California Regional Water Quality Control Board, Central Valley Region (CRWQCB, CVR). 2006a. *Sacramento and San Joaquin River Watersheds Pesticide Basin Plan Amendment Fact Sheet*. October 2006.
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CRWQCB, CVR. 2006b. *The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region — The Sacramento River Basin and The San Joaquin River Basin*. Fourth Edition. California Regional Water Quality Control Board, Central Valley Region. Sacramento, California. Revised August 2006.

Karkoski, J., P. Hann., P. Lee, and Z. Lu. 2006. *Response to Comments on the Scope of a Proposed Basin Plan Amendment for the Control of Pesticides Discharges in the Sacramento and San Joaquin River Basins*. California Regional Water Quality Control Board, Central Valley Region. Sacramento, California.

Appendix A - continued

McClure, D., G. Davis, J. Karkoski, and P. Lee. 2006. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos Runoff into the Sacramento-San Joaquin Delta – Final Staff Report. California Regional Water Quality Control Board, Central Valley Region. Sacramento, California.