

From: Jennifer L. Spaletta, jspaletta@herumcrabtree.com

September 10, 2002

To: Christopher Foe, Ph.D
Regional Water Quality Control Board
Central Valley Region
3443 Routier Road, Suite A
Sacramento, California 95827 Dr. G. Fred Lee

and: G. Fred Lee & Associates
27298 East El Macero Drive
El Macero, California 95618-1005

Re: Draft Responses to the CALFED Low-DO Directed Action Project External Peer Review Panel's Overall Comments by Dr. G. Fred Lee, August 16, 2002

Dear Dr. Foe and Dr. Lee:

The following comments are submitted on behalf of Stockton East Water District (SEWD). SEWD receives a portion of its water supply from the Stanislaus River and has been monitoring the stakeholder process for the DO TMDL. SEWD continues to support the stakeholder process and appreciates the substantial amount of effort that has been put into the process to date. However, one of Dr. Lee's recent comments has given us cause for concern.

On page 9 of his draft comments to the External Peer Review Panel's Overall Comments, Dr. Lee states:

"J. Cloern...has misinterpreted the US EPA's Clean Water Act requirements for DO depletion for controlling water quality problems. The US EPA (2002) Region 9 has indicated in recent communications that solving the problem does not necessarily mean that there has to be a load reduction. Solving the problem can be accomplished by other means. While, typically, TMDL's are solved through pollutant load reductions, this does not mean that other approaches (such as flow, etc.) are not equally acceptable."

First, we believe it is inappropriate for Dr. Lee (a CALFED principal investigator) to express a legal opinion purporting to interpret the Clean Water Act's requirements. Second, this opinion is incorrect. While flow may be one of several tools used to solve the DO problem in the channel, the primary purpose of the TDML process (and the Clean Water Act) is load reduction. SEWD certainly does not agree with Dr. Lee that flow augmentation is an "equally acceptable" solution to the DO problem.

Thank you again for the opportunity to provide these comments.

Very truly yours,

JENNIFER L. SPALETTA
Attorney-at-Law

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