

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
AUGUST 20, 2013**

ITEM 3

SUBJECT

CONSIDERATION OF A RESOLUTION TO ALLOCATE \$370,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD (CENTRAL VALLEY WATER BOARD) FOR THE DELTA MERCURY EXPOSURE REDUCTION PROGRAM (PROJECT)

DISCUSSION

The Central Valley Water Board is requesting a total of \$370,000 from the CAA for the Delta Mercury Exposure Reduction Program (MERP). The CAA funds will be used to create and implement exposure reduction activities that may include, but are not limited to, identifying at-risk populations and working with these communities to provide messages and educational materials through routes of distribution that are most appropriate for the communities.

The Sacramento-San Joaquin River Delta Estuary (the “Delta”) has been listed as an impaired water body pursuant to federal Clean Water Act section 303(d) because elevated concentrations of methylmercury in fish tissue pose a threat to human health. To address this impairment, the Central Valley Water Board adopted Resolution No. [R5-2010-0043](#) in 2010, which added a program for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin River Delta Estuary (the “Delta Mercury Control Program”) to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (the “Basin Plan”). The Delta Mercury Control Program establishes a total maximum daily load (TMDL) and a control program to reduce fish methylmercury levels in the Delta and Yolo Bypass.

A provision in State Water Resources Control Board (State Water Board) Resolution No. [2005-0060](#), approving the TMDL, directed the Central Valley Water Board to “investigate ways, consistent with their regulatory authority, to address public health impacts of mercury in San Francisco Bay/Delta fish, including activities that reduce actual and potential exposure of and mitigate health impacts to those people and communities most likely to be affected by mercury in San Francisco Bay-Delta caught fish, such as subsistence fishers and their families.” The Delta Mercury Control Program includes elements designed to comply with this provision. Two major activities of the Phase 1 Delta Mercury Control Program (2011 – 2020) are: 1) studies to develop methylmercury management practices, and 2) development of a mercury exposure reduction program to protect people that consume the highest amounts of mercury-contaminated Delta fish.

The Delta Mercury Control Program requires those entities that discharge methylmercury into the Delta and Yolo Bypass to participate in a program to reduce human exposure to mercury-contaminated fish. In 2012, Central Valley Regional Board staff worked with dischargers and other stakeholders to develop a strategy to fund and implement a Delta MERP. The objective of the MERP is to reduce mercury exposure of Delta fish consumers most likely affected by mercury. A study of Delta anglers estimated that 5% of anglers and their families take in methylmercury from local fish at ten times the U.S. Environmental Protection Agency’s

(U.S. EPA's) safe intake level for methylmercury. MERP activities are intended to benefit those that eat Delta fish in excess of fish consumption advisory levels and/or are members of sensitive groups, including pregnant and nursing women, women who may become pregnant, and children.

Funding of this Project will significantly advance a requirement in the Basin Plan to establish a Delta MERP to protect people who eat Delta fish for the period of time that it takes to fully implement mercury source controls. Much of the mercury in Delta fish is a legacy of the State's gold mining history. Responsible parties for many of the historic mining operations cannot be identified.

The MERP strategy estimates the overall cost to form and implement the program will be \$870,000 for a six year period. MERP activities will be described in workplan that is due to be submitted to the Central Valley Water Board's Executive Officer by October 20, 2013. A large number of dischargers are required to participate in the MERP. Some dischargers and discharger groups propose to contribute cash, while other dischargers propose in-kind services that will complement the project. The CAA funds will cover a portion of the State's proportional share of the program costs. The Central Valley Water Board expects in-kind contributions from other state agencies will supplement the funding requested from the CAA.

The State Water Board established Program Preferences for CAA funds based on statewide priorities and Strategic Goals outlined in the Strategic Plan Update 2008-2012. The Project meets the following CAA program preferences:

- Preference #2: Projects that address Disadvantaged Communities Environmental Justice infrastructure needs.
- Preference # 3: Cleanup and/or abatement of 2006-listed water bodies that will help to implement a Total Maximum Daily Load (TMDL).
- Preference # 4: Cleanup and/or abatement of non-point source legacy pollutant (i.e., Stormwater) when the source(s) of the pollution have been mitigated.

The Central Valley Water Board Executive Officer issued Resolution No. [R5-2013-0400](#) in June 2013 to request that the State Water Board approve funding from the CAA for the Project.

The requested allocation is consistent with the purposes of Water Code Section 13442. Section 13442 provides that the State Water Board may order monies to be paid from the CAA to a public agency and certain not-for-profit organizations and tribal governments that serve disadvantaged communities and have the authority to clean up or abate the effects of a waste in order "to assist it in cleaning up the waste or abating its effects on the waters of the state."

POLICY ISSUE

Should the State Water Board:

1. Approve \$370,000 from the CAA to fund the Project?
2. Approve the funding with the expectation that if the agreement has not been executed by June 30, 2014, the Executive Director will bring this item back to the State Water Board in October 2014 for possible rescission of funding?

3. Make the funds available until May 31, 2020, and revert any unexpended funds to the CAA as of June 30, 2020, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension?

FISCAL IMPACT

The current uncommitted CAA balance is estimated to be no less than \$8.7 million.

REGIONAL BOARD IMPACT

Yes, the Central Valley Water Board staff will oversee the Project as the Contract Manager and will review and have final approval over all of the Project Deliverables.

This Project is a component of the Delta MERP that will also receive support from dischargers. A Delta MERP Steering Committee comprised of technical staff from State public health agencies and the Central Valley Water Board, dischargers, and other stakeholders is providing guidance to the Delta MERP activities. As a participant in the MERP Steering Committee, Central Valley Water Board staff has committed time to reviewing MERP activities and to communicating progress to the Central Valley Water Board. As the Contract Manager, staff will also ensure that the Project activities are integrated with and not duplicative of other Delta MERP efforts.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012, implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. It will also assist the Water Boards in reaching Goal 3 of the Strategic Plan Update: 2008-2012, increase sustainable local water supplies available for meeting existing and future beneficial uses by 1,725,000 acre-feet per year by 2015, and ensure adequate flows for fish and wildlife habitat. It will also assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2013-

ALLOCATE \$370,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA)
TO THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD
(CENTRAL VALLEY WATER BOARD) FOR THE DELTA MERCURY EXPOSURE
REDUCTION PROGRAM (PROJECT)

WHEREAS:

1. The Central Valley Water Board is requesting a total of \$370,000 from the CAA for the Delta Mercury Exposure Reduction Program (MERP);
2. The Sacramento-San Joaquin River Delta Estuary (the "Delta") has been listed as an impaired water body pursuant to federal Clean Water Act section 303(d) because elevated concentrations of methylmercury in fish tissue pose a threat to humans;
3. In 2010, the Central Valley Water Board adopted [Resolution No. R5-2010-0043](#), which added a program for the control of methylmercury and total mercury in the Sacramento-San Joaquin River Delta Estuary (the "Delta Mercury Control Program") to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (the "Basin Plan"). The Delta Mercury Control Program establishes a total maximum daily load (TMDL) and a control program to reduce fish methylmercury levels in the Delta and Yolo Bypass;
4. A provision in State Water Resources Control Board [Resolution No. 2005-0060](#), approving the TMDL, directed the Central Valley Water Board to "investigate ways, consistent with their regulatory authority, to address public health impacts of mercury in San Francisco Bay/Delta fish, including activities that reduce actual and potential exposure of and mitigate health impacts to those people and communities most likely to be affected by mercury in San Francisco Bay-Delta caught fish, such as subsistence fishers and their families." The Delta Mercury Control Program includes elements designed to comply with this provision;
5. The Delta Mercury Control Program requires those entities that discharge methylmercury in the Delta and Yolo Bypass to participate in a program to reduce human exposure to mercury-contaminated fish. In 2012, Central Valley Regional Board staff worked with dischargers and other stakeholders to develop a strategy to fund and implement a Delta MERP;
6. The objective of the MERP is to reduce mercury exposure of Delta fish consumers most likely affected by mercury. A study of Delta anglers estimated that 5% of anglers and their families take in methylmercury from local fish at ten times the U.S. EPA's safe intake level for methylmercury. MERP activities are intended to benefit those that eat Delta fish in excess of fish consumption advisory levels and/or are members of sensitive groups, including pregnant and nursing women, women who may become pregnant, and children;

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7. The CAA funds will be used to create and implement exposure reduction activities that may include, but are not limited to, identifying at-risk populations and working with these communities to provide messages and educational materials through routes of distribution that are most appropriate for the communities;
8. The MERP strategy estimates the overall cost to form and implement the program will be \$870,000 for a six year period. MERP activities will be described in a work plan developed by stakeholders that is due to be submitted to the Central Valley Water Board's Executive Officer by October 20, 2013;
9. The CAA funds will cover a portion of the State's proportional share of the program costs. The Central Valley Water Board expects in-kind contributions from other state agencies will supplement the funding requested from the CAA; and
10. The requested allocation is consistent with the purposes of the Water Code section 13442. Water Code section 13442 provides that the State Water Resources Control Board (State Water Board) may order monies to be paid from CAA to a public agency with the authority to cleanup or abate the effects of a waste in order "to assist it in cleaning up the waste or abating its effects on waters of the state".

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves \$370,000 from the CAA to fund the Project.
2. Approves the funding with the expectation that if the agreement has not been executed by June 30, 2014, the Executive Director will bring this item back to the State Water Board in October 2014 for possible rescission of funding.
3. Shall make the funds available until May 31, 2020, and shall revert any unexpended funds to the CAA as of June 30, 2020, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on August 20, 2013.

Jeanine Townsend
Clerk to the Board