

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2010-xxxx

AMENDMENTS TO THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
FOR
THE CONTROL OF METHYLMERCURY AND TOTAL MERCURY IN THE
SACRAMENTO-SAN JOAQUIN DELTA ESTUARY

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. In 1975, the Central Valley Water Board adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally.
2. The Basin Plan may be amended in accordance with the California Water Code (Water Code) section 13240, et seq.
3. Water Code section 13241 authorizes the Central Valley Water Board to establish water quality objectives and Water Code section 13242 sets forth the requirements for a program for implementation for achieving water quality objectives.
4. The federal Clean Water Act (CWA) section 303 requires the Central Valley Water Board to develop water quality objectives that are sufficient to protect beneficial uses designated for each water body found within its region.
5. The CWA section 303 requires the Central Valley Water Board to review the Basin Plan at least every three years and where appropriate modify water quality objectives or beneficial uses in the Basin Plan.
6. The Sacramento-San Joaquin Delta Estuary (Delta) has been identified under the federal Clean Water Act section 303(d) as impaired due to a fish consumption advisory for elevated concentrations of mercury in fish tissue, which poses a threat to humans. The mercury concentrations also pose a threat to wildlife and threatened and endangered species that consume Delta fish.
7. Pursuant to CWA section 303(d), a total maximum daily load (TMDL) is required to bring the impaired water bodies into compliance with water quality standards. These Basin Plan amendments satisfy the requirements of a TMDL. The draft staff report for the Basin Plan amendments contains TMDL elements including: the numeric targets used in the TMDL analyses; the source analyses for methylmercury and

mercury; the linkage analysis between the targets and methylmercury; load and waste load allocations; and a margin of safety.

8. The Consolidated Toxic Hot Spots Cleanup Plan (Water Code section 13394) adopted by the State Water Resources Control Board (State Water Board) identified the Delta as a toxic hot spot due to mercury. Water Code Section 13392 requires that basin plans and water quality control policies be amended to prevent the creation of new toxic hot spots and the further pollution of existing hot spots.
9. The Central Valley Water Board recognizes that the Basin Plan does not include numeric fish tissue objectives for methylmercury, nor an implementation plan to control methylmercury and inorganic mercury discharges to the Delta; therefore, Basin Plan amendments are appropriate.
10. The proposed amendments modify Basin Plan Chapter II (Existing and Potential Beneficial Uses) to add the commercial and sport fishing (COMM) beneficial use as a designated beneficial use in the Delta and Yolo Bypass north of the Delta.
11. The proposed amendment modifies Basin Plan Chapter III (Water Quality Objectives) to add site-specific numeric fish tissue objectives for the Delta and Yolo Bypass north of the Delta.
12. The proposed amendments modify Basin Plan Chapter IV (Implementation) to include methylmercury and inorganic mercury control program for the Delta and Yolo Bypass north of the Delta (Delta Mercury Control Program). The proposed amendments establish the loading capacity and allocations for methylmercury. The allocations are needed to provide a clear basis for implementation of actions to achieve compliance with applicable fish tissue objectives. The loading capacity and allocations also satisfy the federal requirements for a TMDL.
13. The proposed amendments divide implementation into two phases. In Phase 1, the proposed amendments require dischargers of methylmercury to conduct studies to identify potential methylmercury control methods and evaluate the effectiveness, cost, and potential environmental effects of identified methylmercury control methods. The proposed amendments also require specific point source dischargers to implement pollution minimization programs during the first phase of the control program.

At the end of Phase 1, the Central Valley Water Board will evaluate the completed studies, and will consider: modification of methylmercury objectives or allocations; adoption of management practices and implementation schedules for methylmercury controls; and a Mercury Offset Program to compensate for loads in excess of the methylmercury allocations. The proposed amendments require dischargers to implement methylmercury management practices during Phase 2 of the control program.

14. The proposed amendments modify Basin Plan Chapter V (Surveillance and Monitoring) to include monitoring requirements to allow the Central Valley Water Board to assess progress in reducing inorganic mercury and methylmercury discharges and to determine compliance with fish tissue objectives.
15. The Central Valley Water Board has considered the factors set forth in Water Code section 13241, including economic considerations, in developing this proposed amendment. The costs of implementing the proposed amendments are reasonable, considering the size of the geographic area and the number of methylmercury dischargers affected by the amendment.
16. The proposed amendments include an estimate of the cost of the implementation program to agriculture and identify potential sources of financing, as required by Water Code section 13141.
17. Central Valley Water Board staff developed a draft staff report and draft Basin Plan amendments for independent, external scientific peer review in June 2006 in accordance with Health and Safety Code Section 57004. The draft final staff report and amendments have been changed to conform to the recommendations of the peer reviewers or staff has provided sound rationale for why individual recommendations were not adopted.
18. The Central Valley Water Board finds that the scientific portions of the proposed Basin Plan amendments are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code section 57004.
19. The Central Valley Water Board finds that the proposed amendments are consistent with the State Water Board Resolution No. 68-16, in that the addition of fish tissue objectives (i) considers maximum benefit to the people of the State, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies, and the proposed amendment is consistent with the federal Antidegradation Policy (40 C.F.R. § 131.12). The proposed amendments require actions to be taken to implement management practices to ensure compliance with the fish tissue objectives. Such actions are of maximum benefit to the people of the State. Control of discharges of inorganic mercury and methylmercury to the Delta is necessary to protect beneficial uses of the Delta. The proposed amendments will not unreasonably affect present and anticipated beneficial uses nor result in water quality less than described in applicable policies because the amendment is intended to result in compliance with the fish tissue objectives and contains an implementation plan that incorporates an adaptive management approach designed to avoid negative impacts to beneficial uses.
20. The regulatory action proposed meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).

21. The Central Valley Water Board staff held a California Environmental Quality Act (CEQA)(Pub. Resources Code §21000, et seq.) scoping meeting on 29 September 2005, a Board workshop on 28 November 2005, public workshops on 18 and 19 September 2006, a Board workshop on 16 March 2007, Board hearings on 24-25 April 2008, and numerous meetings with stakeholders to receive comments on the draft amendments and to identify any significant issues that must be considered.
22. The basin planning process has been certified by the Resources Agency as an exempt regulatory program because its process adequately fulfills the purposes of CEQA. The Central Valley Water Board is therefore exempt from CEQA's requirement to prepare an environmental impact report, negative declaration, or initial study for the proposed amendments. Central Valley Water Board staff has prepared the required documentation for adoption of a Basin Plan amendment, including an environmental checklist and written report (staff report) (23 Cal. Code Regs. § 3777).
23. Central Valley Water Board staff has prepared draft Basin Plan amendments and a staff report dated February 2010. The staff report includes environmental documentation consisting of a description of the project and proposed amendments, environmental analysis and checklist, identification of potentially significant adverse environmental impacts, an analysis of reasonable alternatives to the proposed amendments, an analysis of the reasonably foreseeable alternative methods of compliance with the proposed amendments, and an analysis of the reasonably foreseeable environmental impacts of the methods of compliance and mitigation measures. The environmental documentation also includes stakeholder comments, staff responses to comments, and this Board resolution.
24. The proposed amendments have the potential to cause significant adverse impacts upon the environment, primarily because implementation of the amendments may cause the design and location of proposed wetlands restoration projects to be reconsidered and perhaps modified. However, there are mitigation measures that, if employed, would substantially lessen the potentially significant adverse impacts. These mitigation measures are within the responsibility and jurisdiction of the dischargers implementing control actions, and not the Central Valley Water Board. Water Code section 13360 precludes the Central Valley Water Board from dictating the manner in which responsible agencies comply with any of the Central Valley Water Board's regulations or orders. When the dischargers responsible for implementing this amendment determine how they will proceed, the dischargers responsible for those parts of the project can and should incorporate mitigation into any subsequent projects or project approvals. Until additional methylmercury studies have been completed, it is not known whether wetlands that may contribute methylmercury to the Delta and Yolo Bypass also provide critical habitat to species of concern, and whether it will be possible to mitigate the potential impacts to less than significant levels.

25. From a program-level perspective, incorporation of the mitigation measures outlined in the staff report will foreseeably reduce most potential impacts to less than significant levels. Other impacts could be significant and therefore staff prepared a Statement of Overriding Considerations.
26. The Statement of Overriding Considerations evaluates the ecological and health benefits of implementing the proposed Basin Plan amendments in relation to the potentially significant adverse impacts. A fishery with mercury-contaminated fish is an environmental justice issue and is a threat to wildlife. Implementation of the proposed amendments will result in an overall improvement in water quality in the Delta region and will have a significant positive impact upon the environment by enabling humans and wildlife to safely consume Delta fish. To the extent significant adverse environmental effects could occur, the Central Valley Water Board has balanced the economic, legal, social, and other benefits of the amendments against the potentially unavoidable environmental risks and finds that specific economic, legal, social, and other benefits of the amendments outweigh the potentially unavoidable adverse environmental effects, such that those effects are considered acceptable.
27. Central Valley Water Board staff has circulated a Notice of Public Hearing, Notice of Filing, a written staff report, response to public comments documents, environmental checklist, and draft amendments to interested individuals and public agencies, including persons having special expertise with regard to the environmental effects involved with the proposed amendments, for review and comment in accordance with state and federal environmental regulations (23 Cal. Code Regs. § 3775, 40 C.F.R. Part 25, and 40 C.F.R. § 131).
28. Stakeholders, including representatives from irrigated agriculture, managed wetlands, wastewater treatment plants, municipal stormwater, environmental advocates, environmental justice advocates, and State and federal agencies, participated in a collaborative stakeholder process with Central Valley Water Board staff that contributed to the development of the proposed Basin Plan amendments for the Delta Mercury Control Program.
29. A subset of the stakeholders, with support from Central Valley Water Board staff, is developing an adaptive management plan that can be used by dischargers and other stakeholders to develop and implement activities required under Phase 1 of the Delta Mercury Control Program in an effective and efficient manner. The adaptive management plan includes, among other information: guiding principles for the overall Delta Mercury Control Program and for future offset policy, an organizational structure with roles and responsibilities, guidance for the Phase 1 methylmercury control studies and exposure reduction program, and potential funding strategies.

30. Responses to all comments have been prepared and the proposed amendments, staff report and environmental checklist have been revised as appropriate in response to comments.
31. The Central Valley Water Board held a public hearing on 22 April 2010, to receive testimony and adopt the draft Basin Plan amendments. Notice of the public hearing was sent to all interested persons and published in accordance with Water Code section 13244.
32. Based on the record as a whole, including draft Basin Plan amendments, the environmental document, accompanying written documentation, and public comments received, the Central Valley Water Board concurs with staff's conclusion that some actions to comply with the Basin Plan amendments may result in significant impacts and the Central Valley Water Board concurs with the Statement of Overriding Considerations. The Central Valley Water Board finds that the record as a whole and the procedures followed by staff comply with applicable CEQA requirements (Pub. Resources Code § 21080.5, 14 Cal. Code Regs. §15250, et seq., 23 Cal. Code Regs. § 3775, et seq.).
33. Basin Plan amendments must be approved by the State Water Board, Office of Administrative Law (OAL), and the United States Environmental Protection Agency (USEPA). The proposed amendments become effective under State law after OAL approval and become effective under the federal Clean Water Act after USEPA approval.
34. The Central Valley Water Board finds that the amendments to the Basin Plan were developed in accordance with Water Code section 13240, et seq.

THEREFORE BE IT RESOLVED:

1. Pursuant to Water Code section 13240 et seq., the Central Valley Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff report and adopts the amendments to the Basin Plan as set forth in Attachment 1.
2. The Central Valley Water Board supports stakeholder development and implementation of an adaptive management plan that will help implement activities required under Phase 1 of the Delta Mercury Control Program.
3. Central Valley Water Board staff is directed to continue working with stakeholders in the development and implementation of the Phase 1 activities.
4. The Executive Officer is directed to forward copies of the Basin Plan amendments to the State Water Board in accordance with the requirements of Water Code section 13245.

5. The Central Valley Water Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of sections 13245 and 13246 of the Water Code and forward it to OAL and the USEPA for approval. The Central Valley Water Board specifically requests USEPA approval of all Basin Plan amendment provisions that require USEPA approval.
6. If during its approval process the Central Valley Water Board staff, State Water Board or OAL determines that minor, non-substantive corrections to the language of the amendments are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Valley Water Board of any such changes.
7. The Central Valley Water Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.
8. Following approval of the Basin Plan amendments by the OAL, the Executive Officer shall file a Notice of Decision with the Secretary for Resources in accordance with Public Resources Code section 21080.5, subsection (d)(2)(E), and California Code of Regulations, title 23, section 3781.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____ 2010.

PAMELA C. CREEDON, Executive Officer

Attachment 1: Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin River Delta Estuary