

April 7, 2010

Ms. Kathryn Hart, Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Cc:

Cheryl Maki, CVRWQ Vice Chair
Nicole Bell
Julian Isham
Karl Longley
Sandra Meraz
Dan Odenweller
Robert Walters
Patrick Morris

Re: Proposed Sacramento-San Joaquin Delta Estuary Basin Plan Amendment / Methylmercury Total Maximum Daily Load

Dear Chairwoman Hart and Fellow Members of the Board,

The Big Valley Rancheria Band of Pomo Indians wishes to make comments on the above referenced proposed TMDL.

We would like to start with thanking the staff, particularly Janice Cooke, for their timeliness in responding to our questions and requests for information.

The Tribe has not been involved in this Basin Plan Amendment (BPA) long – we became aware of it in late fall 2009. At that time, several Tribes that are connected culturally to the Bay Delta realized that this process had been occurring for several years and there was a concern that there was no time to meaningfully participate in the process. Fortunately, a meeting was quickly arranged between US EPA, Regional Board staff and a handful of the concerned Tribes. The comments that we are submitting today are reflective of what we discussed at that meeting.

Although Regional Board staff included the Tribes once we reached out to the existing stakeholder group in late fall 2009, in no way was the original stakeholder process and outreach successful in reaching Tribes. It has become apparent that the ‘defining’ process for Regional Board is whether the Tribe owns land in the vicinity, not their ancestral boundaries where cultural activities, ceremonies and other Tribally sensitive activities occur. We hope that our involvement to date in this proposed TMDL has educated Regional Board staff about not limiting outreach to Tribes solely based on project location.

- 1) Fish consumption data being used in the development of the BPA do not accurately reflect Tribal fish consumption. With the proposed fish tissue objective, Natives who depend on fish for culture and sustenance will be consuming poisonous levels of mercury. The proposed fish tissue objectives will not meet the beneficial use for potentially tens of thousands of consumers of Delta fish. The

proposed fish tissue objectives should be modified to reflect the consumption rates of subsistence fishers. The fish tissue target of 32 grams per day is not protective of Tribes who consume the fish in the Bay Delta for subsistence, traditional or ceremonial use.

We support BPA Alternative 5 which is protective of people who eat the subsistence level of TL3 and TL4 fish by recognizing that a segment of the population is consuming fish at a rate of 142 grams per day. This will ensure the Clean Water Act is being implemented because the beneficial use of fishing will be met. We understand that the Region 1 has adopted both the Native American Cultural (CUL) and Subsistence Fishing (FISH) use and we believe this should be adopted in this BPA as well.

- 2) Regarding Phase I and Control Study Workplans: A nine year study period is unacceptable and should be reduced. The amount of time prior to implementation of the plan leaves fish eating populations vulnerable and this is an unacceptable risk. If anything, these workplans should be completed within the first two years of the effective date of the BPA.

In addition, new mercury loading should not be permitted during Phase I of this BPA. According to Sec. 303(d)(4) (A) of the Clean Water Act, if a standard is not attained any waste load allocation established through a TMDL “may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard.”

Thank you for this opportunity to provide comment on this BPA.

We look forward to working with all partners to implement an effective TMDL and return the Delta to health that will re-establish local traditional food and the protection of culturally sensitive areas within the Watershed.

Sincerely,

Sarah Ryan, Environmental Director
Big Valley Rancheria
sryan@big-valley.net