



CLEAN WATER ACTION

November 8, 2006

Mr. Patrick Morris
Ms. Janis Cooke
Central Valley Regional Water Quality Control Board
Sacramento Main Office
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

RE: Comments on the Proposed Methylmercury Basin Plan Amendment for the Sacramento-San Joaquin River Delta Estuary.

Dear Mr. Morris and Ms. Cooke,

On behalf of Clean Water Action (CWA) and our 20,000 California members, I wish to thank you for providing us with the opportunity to make oral comments at the September 18, 2006 workshop on the proposed Delta Methylmercury Basin Plan Amendment (BPA), and to submit these written comments as a follow up. The goal of our participation in this and other TMDL processes is to ensure that TMDLs are set and implemented in such a way as to aggressively address both the environmental impacts of contamination of our water bodies and the related environmental justice issues affecting our communities. It is in this spirit that our comments are submitted for your consideration.

1. Focus on methylmercury

We approve of the focus of this TMDL on methylmercury. While we understand that the presence of elemental mercury does hold the potential of methylmercury production, its control is only one part of bringing the watershed back into compliance. It is, after all, methylmercury that interferes with the Delta's beneficial uses. In addition, basic clean up of mercury is both complex and can take many decades. Consequently, understanding the factors that lead to methylation in this watershed will be critical in order to develop strategies to protect public health threatened by fish consumption, as well as the wildlife that are the links in the food chain up which bioaccumulated mercury travels. It will also be essential in identifying appropriate actions to restore wetlands, an issue that is particularly important in the Delta (see further comments on this issue below).

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2. Fish tissue methylmercury objectives

CWA contends that a fish tissue objective based on a human consumption rate of one meal a week disregards the potential exposure to subsistence fishers in the watershed who may consume larger amounts of Delta fish for cultural or economic reasons. Before fish tissue objectives can be accurately established, there needs to be a determination of what the consumption rates are in the various ethnic and income level communities that make up the Delta region. In addition, since the fish tissue objectives differ for fish at different trophic levels, we need a clear understanding of what types of fish people are eating. Until we have such data, we must be precautionary in our approach and set objectives that allow for potentially high levels of consumption in order to protect anglers, particularly pregnant and breastfeeding women and children.

In its effort to establish fish consumption levels and patterns in the Delta, we recommend that Regional Board staff confer with the Department of Health Services' Department of Environmental Health Investigations Delta Watershed Fish Project. This program's staff has done focus groups to evaluate fishing patterns in the Delta among a variety of ethnic groups and has established the Local Stakeholder Advisory Group focused effective, culturally appropriate outreach to anglers. In addition, the California Bay-Delta Authority's Fish Mercury Project is tasked with examining fish mercury and other chemical levels in the Delta, in line with Environmental Justice principles. This includes conferring with community groups and individuals about where people tend to fish and what types of fish they are eating. The data being collected through both these efforts may help to further inform any decisions about what fish tissue objectives will be truly protective and therefore appropriate for this TMDL.

3. Offsets

Because of the extensive discussion about offsets at the September workshop, we wish to make clear Clean Water Action's position on such a policy. While offset programs are often touted as resulting in aggregate environmental benefits, they have also often resulted in disproportionate impacts on local, usually disadvantaged communities of color and can discourage dischargers from reaching optimum pollution reductions. Consequently, as an organization committed to the principles of Environmental Justice, we believe that while offsets can at times be environmentally beneficial in aggregate, they should be seen as generally undesirable and a last resort. If they are implemented in cases where certain dischargers cannot otherwise meet their permit requirements, it should be done within narrow parameters. Specifically:

- **Offsets plans or programs are acceptable *only* if it can be demonstrated that there are no disproportionate impacts on any local community.** It should be noted that disparate impacts not only include additional pollution that the community experiences but maintaining the same level of contamination while other communities are experiencing reductions in their local water and fish
- Offsets should not include or entail pollution trading schemes that allow one discharger to trade credits with another. This serves only to move pollution around, discourage

optimum pollution reductions, and can further contaminate local communities situated near or around the discharger who has obtained the extra credits.

- Dischargers must first demonstrate that they have done everything possible through treatment and pollution prevention strategies to meet their permit goals, before being allowed to comply through an offset. We recognize that there are times when a discharger, particularly one who does not create but must manage pollutants, makes a good faith effort to comply with their permit requirements through treatment and pollution prevention strategies, but is still unable to meet the expected allocations. If it can be established that that party has done all that is reasonable to meet their allocation, we would support their putting resources toward remediation/mitigation of another contaminant source to meet their permit requirements*, but again, only if it can reasonably be demonstrated that no community will experience disparate impacts.
- The development of a state or regional offsets program must include broad public participation and input. Such programs should also require public review and an opportunity for real input from local communities before specific offsets are approved for individual dischargers or groups of dischargers.

4. Wetlands restoration

Clean Water Action is committed to the protection and restoration of wetlands both in California and nationally. However, we are also committed to ensuring that all communities are protected, including disadvantaged communities who rely on local fishing as a major source of food. One of the goals is to protect communities from exposure as quickly as possible. That requires a decrease in the level of methylmercury bioaccumulating in Delta fish. For this reason, we believe that wetlands and wetland restoration projects must be held to strong methylmercury standards. We therefore advocate that research be focused on the methylation processes in wetlands that will enable us, in future, to restore wetlands without increasing bioaccumulation that threatens both humans and wildlife. This research, and potential pilot programs that grow out of it, should be prioritized around wetlands that may have high impacts on local communities, and community groups working on wetlands restoration should be included in the process of studying methylation and developing strategies to address the problem. We further recommend that as the science about methylation is still in the early stages, new wetland restoration projects be prioritized with an initial focus on those areas that are not downstream of mercury sources, such as mines, and those that are less likely to impact anglers and fish eating wildlife.

5. Risk Reduction

The State Water Resources Control Board Resolution 2005-0060 directs the San Francisco Bay and Central Valley Regional Boards 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

* An example would be a municipal waste water facility putting resources toward mine remediation.

people and communities most likely to be effected by mercury in San Francisco Bay-Delta caught fish, such as subsistence fishers and their families.” (emphasis added)

As the State Board’s language makes clear, such efforts must be tangible actions and programs that actually reduce actual exposure to mercury laden fish and address impacts of exposure. An example of the latter would be medical screening through community clinics where there are high rates of subsistence fishing. We wish to stress that while fish advisories, warnings, and education, may constitute a part of the risk reduction, they are only a part. This is because subsistence fishers often do not have a choice about eating what they catch and warnings and education do little to protect them. Furthermore, strategies should be developed with diverse community input as to what is needed and what is most likely to have actual positive impacts.

CWA strongly advocates that the State Board’s language on risk reduction, as presented above, be inserted into the document, including in sections focused on specific discharger responsibility in the implementation plan. There is precedent for this in the San Francisco Bay mercury TMDL and implementation plan. Our reasons for this request are two-fold: 1.) a sustainable risk reduction strategy needs to be codified in the Basin Plan Amendment to ensure its actual implementation and sustainability over the decades it will take to bring the Delta back into compliance with water quality regulations and 2.) to ensure that dischargers help to support or facilitate such efforts, as is happening to some extent in the Bay Area.

Finally we strongly recommend that Regional Board Staff begin identifying community members and organizations to participate in developing risk reduction strategies for the Delta’s impacted communities. We further recommend that Staff, community members, and dischargers coordinate risk reduction efforts with those begun as part of the San Francisco Bay mercury TMDL process. While that process, initiated by the Clean Estuary Partnership is still at a developmental stage, and therefore imperfect and somewhat limited, it is our expectation that as the process, with continued stakeholder input, evolves it will lead to meaningful strategies to protect our low income communities and communities of color.

We appreciate the immense amount of work that Regional Board Staff has put into the Delta methylmercury plan. As already stated, our goal is to provide input that will ensure that this TMDL will reverse the impairment in as thorough and timely a manner as possible. We believe it will take a stringent plan that stops the further bleeding of methylmercury into the watershed, manages wetlands in such a way as to prevent increased methylation, addresses current contamination, and protects those people who rely on the Delta for basic sustenance.

Sincerely,

Andria Ventura
Program Manager