

**Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) and  
Basin Plan Amendment**

**Stakeholder Informational Meeting  
Draft Meeting Summary**

**MEETING DATE:** March 26, 2009

**LOCATION:** San Joaquin Farm Bureau  
3290 N Ad Art Road  
Stockton, CA

**ATTENDEES:** See attachment

**ACTION ITEMS**

1. Patrick Morris, Central Valley Regional Water Quality Control Board (Water Board) will distribute revised draft principles workgroup outcome text.
2. Michelle Wood, Water Board Staff, will send citations of current bioremediation studies to attendees and other interested parties.
3. CCP will work with Water Board Staff to set up an online document repository within the next two weeks
4. CCP will add an exemption list discussion to a future meeting agenda (as per discussions by the Principles Workgroup).

**MEETING SUMMARY**

**Welcome, Introductions, and Agenda Review**

Dave Ceppos, facilitator from the California State University Sacramento, Center for Collaborative Policy (CCP), welcomed everyone, reviewed the agenda and the purpose of the meeting: *“Focus discussion on Workgroups outcomes and next steps to formalize the Stakeholder Advisory Group and participation of underrepresented communities.”*

**Introductory Remarks**

Ken Landau, Water Board Assistant Executive Officer for the Water Board provided opening remarks. He said he would prefer to take a complete TMDL to the Board, and remarked that Board staff had been working on the Delta MeHg TMDL for several years. Mr. Landau said there were several questions currently under consideration by the Board:

- Is there a reasonable expectation that extending the deadline for the TMDL will produce a better outcome?
- How much additional time might be needed related to the work of the stakeholder group?

Mr. Landau stated that if there is a reasonable completion target with a high confidence that it can be met, the Water Board might consider allowing the formal stakeholder process to proceed through the summer and early fall to ensure an effective outcome from the process. He said the

Water Board was under pressure from the US Environmental Protection Agency to complete the TMDL in a timely manner.

A stakeholder asked if the group has identified a lack of participants amongst environmental justice groups; what is the Board doing about this?

Mr. Ceppos replied that CCP had just completed a second round of phone messages and in some cases conversations with representatives from the environmental justice community. He explained that CCP is trying to create an environmental justice coalition whose purpose would be to connect the large stakeholder group to an environmental justice caucus. Mr. Ceppos pledged to keep the entire group informed as this effort progresses.

Another stakeholder asked if Water Board Staff plan to give a status report at the April Board meeting?

Mr. Ceppos replied that he had been asked to put together and present a stakeholder status report at the Board Hearing.

Mr. Landau explained to the group that the Water Board is in the process of figuring out the value added from this TMDL stakeholder process. He explained that some stakeholder processes are very productive and produce a better outcome, but others spend a lot of time and never reach agreement. He said the Board would decide if a potential time delay would be counter balanced by the improved end product.

Mr. Ceppos stated that CCP and Board Staff are at a point where they are able to lay out the key upcoming milestones and would get that information to the group shortly.

On stakeholder as what is it that the Board wants from this process? Another stakeholder pointed out that in terms of value add, this TMDL is different than the typical TMDL process. There is a great deal of value added to have everyone in the same room, rather than stakeholders showing up at a Water Board meeting and having one directional conversations. This stakeholder process allows different interests a way to hear what the others say.

Mr. Landau replied that the Board is not expecting everyone to love every detail of the TMDL, but wants to ensure that all stakeholder groups understand what is going on and feel that their point of view has been heard. He said that this is just one step, with many more steps to come. His hope was that there would be dialogue with stakeholders for many years to come.

### **Review and Discuss DRAFT Outcomes for Principles Workgroup**

On behalf of the Principles Workgroup, Tony Pirondini, City of Vacaville, presented the draft text that was developed by the Workgroup since the February 19<sup>th</sup>, 2009 meeting. Members of the Workgroup include: Rudy Rosen, Diane Fleck, Stephen McCord, Lysa Voight, Tony Pirondini, Dan Cloak and Patrick Morris.

**Guiding Principle 1:** *Phase 1 studies should address both total mercury and MeHg for all sources. Reasonable control options should be implemented during Phase 1 for total mercury and/or MeHg.*

Mr. Pirondini said the Workgroup focused a large amount of attention on this principle, and there was agreement that MeHg was the common concern. He discussed the fact that MeHg is not a conservative attribute but said that there are still studies needed. Chris Foe, Water Board Staff, said that as part of CALFED, Water Board Staff were asked to do a mass balance on MeHg in the Delta. Mr. Foe discussed the conservative nature of MeHg; saying that lab studies show it is stable over several days after sample retrieval. He said that MeHg is not necessarily conservative but is not very reactive either. Mr. Pirondini defined conservative as: the compound that measures the same despite the environment; and does not change easily from one form to another.

The following stakeholder concerns were raised in regards to Guiding Principle #1:

- Society might lose the food web that it is trying to protect.
- Not sure society is ever going to be able to remove all the Mercury. Need to take action now.
- Human consumption of fish needs to be addressed.
- Water quality standards need to include wildlife.
- Control measures may take 100 years to implement and show improvement.
- The Water Board and/or other agencies should provide people with information regarding which fish species are susceptible to bioaccumulation and which are not.
- People should not have to choose between eating Delta fish or protecting their health.

**Guiding Principle 2:** *Phase 1 control studies should develop knowledge for effectively controlling MeHg.*

Mr. Pirondini said the Workgroup added that there is limited knowledge about how to control MeHg production and discharge.

**Guiding Principle 3:** *The document should state the shared current understanding of the ability to control total mercury and MeHg sources to attain allocations and fish tissue objective. The TMDL source control requirements should be based on that understanding and the results of the Phase 1 studies, and be reasonable.*

Diane Fleck, EPA expressed concern about including text “to attain allocations and fish tissue objective”. She said the process to set fish tissue objectives is different than in a TMDL. This TMDL can identify the allocations. The fish tissue objectives are numeric targets, meant to protect the beneficial uses. The following stakeholder concerns were raised in regards to Guiding Principle #3:

- We need the proposed Phase 1 studies to know what is possible.
- We may never be able to achieve levels of the fish tissue objectives.
- Concerned about the fish tissue objectives in that they presume a previously agreed upon exposure.

- It is built into the Water Quality EPA handbook to review standards; they can be changed at any time.

Ms. Fleck clarified if a state wants to address a higher consumption rate they are free to do so, but that it would be very difficult to go below the 304A guidance criteria set by EPA. Mr. Morris proposed, and the group confirmed, that the Principles Workgroup should continue working on this concept. He said Board Staff would distribute the revised principles text to the group within the next several days.

**Guiding Principle 4:** *The mercury control program should be adaptable.*

A member of the group asked for the definition of control program. Mr. Morris explained that the mercury control program is the TMDL and the adaptive framework.

**Guiding Principle 5:** *The mercury control program should implement reasonable, feasible actions to address MeHg loads/production and human/wildlife exposure in the near-term.*

Mr. Pirondini stated that one of the goals would be to remove mercury, but that they do not yet understand how to do it. A comment was raised about which plants might remove mercury from the environment. Michelle Wood, Water Board Staff, said that there are some studies currently looking at bioremediation and if the group was interested, she could send them a couple of citations. Several people were interested.

**Guiding Principle 6:** *The mercury control program should incorporate long-term stakeholder involvement in the control studies, Technical Advisory Committee, and upstream TMDL's.*

Mr. Pirondini explained that “involvement” means development, implementation, and review. The group felt that this principle could apply to Adaptive Framework Workgroup and how they recommend the integrated work of technical advisors and stakeholders.

**Guiding Principle 7:** *The control program should create incentives and encourage innovative actions to address the accumulation of MeHg in fish tissue and reduce MeHg exposure, including watershed approaches, offset projects, and short and long-term actions that result in reducing total mercury and MeHg.*

The group discussed what the incentive would be to participate in innovative actions. The following comments were made:

- An incentive program could be similar to an easement programs.
- There is a difference between using the term “incentive” instead of something like “strategies”. “Incentive” infers that participating in a control program is not mandatory and must be made more attractive to a discharger. We should not be seeking to encourage mandatory actions but rather, seeking to create strategies that make such actions as painless as possible.
- Conversely, from a practical standpoint, there really has to be an incentive for the NPDES permit to go through. There has to be a reasonable incentive for a discharger to get things done.

- If “low-hanging” projects are identified and implemented in Phase 1, what kind of credit are dischargers going to receive.
- In a TMDL process the regional board can not tell dischargers how to meet a waste load allocation. The incentives can tell dischargers how to do something more efficiently.
- This process needs a central repository for scientific studies. CCP will have a document repository set up within the next two weeks

The group agreed that Guiding Principle 8: *Innovative and creative solutions such as offsets should not substitute for reasonable actions to address local impacts* should be tied to Guiding Principle 7. Mr. Morris closed the discussion by saying this principle discussion should be put to the Adaptive Framework Workgroup also.

**Guiding Principle 9:** *The fish tissue objective and the attainability of the allocations should be re-evaluated based on the findings of Phase 1 control studies.*

The group agreed that this principle needed to go back to the Principles Workgroup.

**Guiding Principle 10:** *The implementation plan should include methods to assess magnitude of different MeHg and total mercury sources, and prioritize study and control actions, if and when it is not feasible to pursue those actions simultaneously.*

**Guiding Principle 11:** *The MeHg characterization and control studies should be subject to independent review.*

The group agreed that principles 10 and 11 are connected, and decided to assign the task of refining them further to the Adaptive Framework Workgroup.

**Guiding Principle 12:** *The geographic scope of the Phase 1 mercury control studies and allocations should be downstream of major dams.*

The group discussed the geographic scope of the TMDL, and whether it assigned allocations to the appropriate dischargers. Mr. Morris clarified that the only point sources that have allocations are those within the legal boundaries of the Delta and the Yolo Bypass. The group agreed that the Principles Workgroup will relook at this principle.

**Guiding Principle 13:** *The mercury control program should recognize, address, and account for the need to balance the multiple competing and conflicting interests and projects in the Delta, such as habitat restoration, flood protection, and water supply.*

Mr. Pirondini explained that the Workgroup felt that the “exemptions” list had been started and may need to be reviewed as discussions with various stakeholders continue. Mr. Morris clarified that the exemption list was provided to the group at the January 30<sup>th</sup> stakeholder meeting. The group agreed to make this issue an agenda item at a future meeting.

The group made the following comments about principle 13:

- The principle text is at a higher level than the more specific exemption.

- What is more important: species protection, flood control, water supply? This may not be reconciled as a “win-win” outcome.
- MeHg is going to impact that ecosystem and human consumers of fish if it is not addressed.
- The California Environmental Quality Act (CEQA) expects you to look at all impacts comprehensively.
- One of the studies in Phase 1 could be the physical accounting of MeHg.

Mr. Morris stated that the CALFED Record Of Decision concluded that restoration projects had to mitigate the effects of MeHg.

**Guiding Principle 14:** *All major sources of MeHg should be given allocations in Phase 1*

Mr. Pirondini explained that this principle was added because the State of California (both State Lands Commission and DWR) owns and manages lands and waters of the state that contribute to MeHg loads. Ms. Fleck added that for a TMDL to be approvable, all sources of MeHg within the TMDL boundary need to be defined.

**Proposed Guiding Principle 15:** *Efforts will be taken to ensure that all stakeholders will be at the table and represented in the process.*

**Review and Discuss DRAFT Outcomes for Adaptive Framework Work Group**

Erik Ringelberg, Wallace Kuhl Consulting, presented an overview of ecosystem adaptive management. The key points of his presentation are as follows:

- Adaptive Management recognizes that one single resource manager can not handle all problems; a multidisciplinary team produces a better outcome.
- All management should be adaptive, but is not always Adaptive Management (Adaptive Management requires testable hypotheses, feedback loops, methods to review results and revise actions, etc).
- A process needs to make sure to include all relevant stakeholders (including resource managers, scientists etc).
- There must be continuous monitoring to supply evolving information.
- There must be an adaptive roadmap (for instance: conduct studies in phase 1, move into phase 2, and continue with comprehensive multi-variant approach).
- Adaptive Management is not always the right tool for the problem.
- A process is only as good as the people involved.
- Scientists are just one, albeit critical, member of the team.
- The feedback loop is critical, otherwise it is not adaptive.

Sally Liu, The Nature Conservancy, reviewed the workgroups progress to date.

- The workgroup started with the bifurcated approach and then covered additional principles.
- The workgroup felt it would be important for the group to do education to help create a shared understanding.

- Decided to focus on the February 17, 2009 Preliminary Program Description – Delta Mercury Control Program – Attachment A, and the February 8, 2008 DRAFT Basin Plan Amendments. To act as “bookends” to for their discussions.

Meeting attendees made the following comments on the Adaptive Framework Workgroup update:

- How can we organize the Adaptive Framework in a strategic way, which groups need to be involved?
- How do you develop a process that is separate than the Basin Plan Amendment.
- What if there are future disagreements on stakeholder recommendations, There should be a way for multiple opinions to be reported as stakeholder outcomes such as majority-minority reports.
- It is very difficult for environmental justice community representatives to participate in the current and any future activities on this project without providing stipends to assist them. They do not have the resources and sometimes lack the expertise to participate in these types of discussions.

Ms. Liu responded that the goal is to have everyone in the room that has a stake in this TMDL process, and then bring draft text back to the full group. If this group of stakeholders and the Water Board agree to create a more structured, formalized stakeholder group in the near future (to be discussed later in this meeting) CCP will recommend “rules of engagement” and a Charter with decision rules. The group will make a good faith effort to reach consensus, and if not, the record will show where consensus was not reached, and what the alternate points of view are.

The group identified the following discussion items for the Adaptive Framework Workgroup:

- Definition of studies and actions (not either/or)
- Educational steps
- “Incentives or strategies“ and how dischargers are motivated to move forward;
- Prioritization and independent science review

### **Review and Discuss DRAFT Outcomes for NPDES Workgroup**

Debbie Webster, Central Valley Clean Water Association, presented an overview of the draft outcomes of the NPDES Workgroup. Her key points were as follows:

- The purpose of the Workgroup is to discuss implementation measures effecting point source dischargers
- The Workgroup is currently discussing the different phases of the TMDL, when studies would occur, and when / how recommendations are made.
- There is general consensus that Phase 1 interim limits will be based on total mercury near or at levels that are currently in NPDES permits.
- There need to be consistent geographic boundaries.

The NPDES Workgroup is currently working to propose specific language for interim limits to the group and work with Water Board Staff for specific permit language for interim limits.

The meeting attendees made the following comments on the draft outcomes of the NPDES Workgroup:

- The phrase in the DRAFT Overview “Phase II does not begin until this process occurs...” is dismissive and incorrect. This needs to be revised to reflect the accurate regulatory requirements regarding compliance.
- There should not be an assumption that there are a certain number of cycles in a permit. Permit cycles can vary in frequency and duration.
- There is a general discomfort with the work this Workgroup is doing. The regulated community is getting an opportunity to say what their NPDES permits should look like. This whole process should occur after the TMDL is adopted.
- In order to have an approvable TMDL, the Water Board needs to have determined waste load allocations
- It is critical to not only look at theoretical but implementable future actions. There needs to be a way to gauge whether an action can be implemented.

### **Discuss Proposed Convening Strategy for Formal Stakeholder Advisory Group**

Mr. Ceppos explained that CCP is recommending a formal stakeholder advisory group for the following reasons:

- While stakeholder attendance at these meetings has been very solid, there is still no way for stakeholders to identify in a structured manner, what might be mutually acceptable approaches for the TMDL. This puts all stakeholders and the Water Board at a disadvantage to make the final decision later this year and leaves open the chance to repeat a similar dynamic that has already happened; principally that stakeholders are not discussing various perspectives together but rather stating positions at Water Board meetings
- The Water Board has directed that a group be convened.

Mr. Ceppos explained that there is no presumption that a group of stakeholders will reach consensus on everything. The group will try to seek consensus. He explained that CCP is going to propose a group “Charter” that will focus on group decision-making done by “Consensus with Accountability”. He said that consensus with accountability means each stakeholder commits to participate and not only seek to meet their self-interest, but also commits to not pose detriment to other interests. Each participant agrees that should they disagree with a proposal, they can not simply say “no” but rather must agree to provide a counter proposal that meets the needs of others and themselves. Regarding times when consensus is not reached, he explained that there are many methods to report various stakeholder perspectives

Mr. Ceppos then described the proposed stakeholder list for the representative group. The following comments were made:

- Bob Schneider would like to have better representation from other watershed level environmental advocates. Mr. Ceppos acknowledged that this has been a dilemma for him and asked Mr. Schneider if he could participate as a watershed / tributary representative? Mr. Schneider agreed that as a representative from Tuleyome, and the Yolo Chapter of Sierra Club, we was willing to fill this role.
- CCP will continue to look for Delta specific environmental groups to participate.

- The US Army Corps of Engineers needs to be involved relative to their dredging responsibilities.
- To not represent decisions as consensus and having a minority report creates a minority which sends an inappropriate message to the decision-makers
- There should not be a final group report that attempts to represent consensus. The value of this process is the shared information and the ability to see staff taking the ideas and making the best TMDL they can; and then taking the plan public.
- CEQA requires a impact analysis to make a decision on the full impact of the proposed project. The clear write up helps to avoid the common legal process and procedural error. Would like to see a document that presents a majority and minority point of view.
- The formal stakeholder process is a welcome alternative to Water Board Staff sitting in their cubicles and writing the Basin Plan Amendment without any input.
- The involvement of the environmental justice communities will require money. The technical tone of the group is not inviting to members of the environmental justice community.
- Not sure what the representative group is going to do. Looking at the Adaptive Framework Workgroup to figure out how the Basin Plan should look.
- Some of us like to work within the existing framework in a collaborative manner.
- Do not want to give formalized advice to the Water Board that represents others point of view.

Mr. Ceppos stated that CCP would like to have “critical path” out to the group shortly that proposes the specific next steps and milestones so that staff and stakeholders have a road map on how the process will proceed. During the assessment process CCP heard clearly that stakeholders would like to be involved in improving but not rewriting the Basin Plan Amendment. Water Board Staff needs to spend some time pulling input from the group into the Revised Amendment. The Workgroups allow more people to be directly involved. He said he would not allow anyone to railroad another person’s opinion. CCP try’s to get people away from positions and willing to talk about interests and issues. Almost always this process “makes the pie bigger” for all stakeholders rather than having groups compete over the “presumed slices of the existing pie”.

Mr. Ceppos asked how many people are unsure about the formal stakeholder process, several people raised their hand.

Mr. Landau added that when a group gets together they are going to have a larger amount of time to discuss what happened, and the smaller groups may get lost; but without some organization to this group, it comes back to the Water Board Staff putting something together and bringing it out to the public to comment on. Mr. Ceppos said that he heard the different points of view in the room, and would meet with senior Water Board Staff very soon to discuss next steps.

### **Discuss Proposed Strategy to Convene / Support an Environmental Justice Caucus**

Mr. Ceppos said the idea is to initially get the environmental justice community to convene a conference call. He said that CCP will try to help by providing facilitation and logistic support

for the caucus. He said the idea of seats at the table would be rotating seats. The stories and the issues need to be brought into the room. Through the caucus group the idea may be unified.

**Adjourn**

## Delta MeHg TMDL March 26 Meeting List of Attendees

Holden Brink	BLM Consumnes River Preserve
Steve Mindt	CA State Lands Commission
Daniela Guthrie	California Department of Transportation
Kari Fisher	California Farm Bureau Federation
Greg Yarris	California Waterfowl Association
Peter Halpin	Caltest
Christal Love	Center for Collaborative Policy
Dave Ceppos	Center for Collaborative Policy
Christine Cordero	Center for Environmental Health
Travis Peterson	Central Valley Clean Water Association
Debbie Webster	Central Valley Clean Water Association
Kim Spear	City of Roseville
Hong Lin	City of Sacramento
Jeff Willett	City of Stockton
Erich Delmas	City of Tracy
Tony Pirondini	City of Vacaville
Tom Scheeler	City of West Sacramento
Mark Cooke	City of Woodland
Andria Ventura	Clean Water Action
Steve Sarantopoulous	Cranmer Engineering and Analytical Laboratory
Ken Landau	CVRWQCB
Michelle Wood	CVRWQCB
Patrick Morris	CVRWQCB
Chris Foe	CVRWQCB
Dan Odenweller	CVRWQCB
John Moynier	David Evans and Associates
Timothy Stevens	Department of Fish & Game
Rudy Rosen	Ducks Unlimited
Jackly Pimentel	DWR
Mark List	DWR
Darby Vickery	DWR
Benny Lee	Environmental Justice Coalition for Water
Adam Steedle	Frog Environmental Ca Stormwater Consultants
Stephen McCord	Larry Walker Associates
Thomas Grovhoug	Larry Walker Associates
Joe Dillon	NOAA
Rex Bell	PG&E
Gian Villarreal	RBF Consulting
Ted Maccoli	Shaw Environmental
Victor Chan	Solano County
Chris Lee	Solano County Water Agency
John Herrick	South Delta Water Agency
Sally Liu	The Nature Conservancy
Bob Schneider	Tuleyome
Diane Fleck	U.S. EPA
Carolyn Yale	U.S. EPA
Thomas Maurer	U.S. Fish and Wildlife
Erik Ringelburg	Wallace-Kuhl & Associates
Stefan Lorenzato	Yolo County Flood Control and Water Conservation District
Fred Lee	