

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

**Stakeholder Informational Meeting  
Draft Meeting Summary**

**MEETING DATE:** October 1, 2009

**LOCATION:** Sacramento Regional County Sanitation District  
10545 Armstrong Avenue, Mather, CA 95655

**ATTENDEES:** See attachment

**ACTION ITEMS**

<b>ITEM</b>	<b>OWNER</b>
Post the September 30 <sup>th</sup> Memorandum to Environmental Justice Representatives to the Central Valley Regional Water Quality Control Board (Regional Water Board) website.	Patrick Morris, Regional Water Board
Compile list of key issues that need additional stakeholder discussion and/or the Regional Water Board Staff (Staff) will likely need to make a decision on.	Patrick Morris, Regional Water Board
Distribute action items from the October 1 <sup>st</sup> Stakeholder Meeting to the Delta MeHg TMDL Representative Stakeholder Group.	Christal Love, Center for Collaborative Policy (CCP)
Send the Phase 1 Schedule in MS Project format to the Regional Water Board by October 6 <sup>th</sup> , 2009.	Mark List, Department of Water Resources (DWR)
Distribute list of key issues and Phase 1 MS Project Schedule to Stakeholder Group by October 7 <sup>th</sup> , 2009.	Patrick Morris, Regional Water Board
Define Memorandum of Intent (MOI), state how it will be used and what regulatory authority it would have prior to October 12 <sup>th</sup> , 2009.	Patrick Morris, Regional Water Board
Identify Stakeholder recommendations that should be placed in the MOI rather than the Basin Plan Amendment (BPA) by October 12 <sup>th</sup> , 2009.	Patrick Morris, Regional Water Board
Speak with the Regional Water Board Executive Officer regarding the outcomes and next steps of the use of a Stakeholder Group "Conditional Charter"	Dave Ceppos, CCP
Schedule an initial MOI Work Group meeting for the week of October 12 <sup>th</sup> , 2009.	Dave Ceppos, CCP
Identify key issues by line number within the BPA.	Patrick Morris, Regional Water Board
Consider developing MOI agreements between individual affected resource agencies and the Regional Water Board (on hold until MOI text is finalized)	Patrick Morris, Regional Water Board
Decide which proposed TMDL document should include the Guiding Principles previously developed by the Stakeholder Group.	Patrick Morris, Regional Water Board

**Meeting Purpose:**

- Review and finalize the Draft Final Stakeholder Group Charter
- Develop Offsets Work Group next steps
- Review revised Delta MeHg TMDL BPA and comment table (*continued from September 17<sup>th</sup> Meeting*)
- Continue development of Draft MOI document

**Welcome, Introductions, and Agenda Review**

Dave Ceppos, CCP Facilitator, opened the meeting, discussed facility logistics, meeting materials and asked meeting participants to introduce themselves. He then reviewed the meeting agenda, provided a walkthrough of the day's materials/handouts.

**Review and Finalize the Draft Final Stakeholder Group Charter**

Mr. Ceppos presented the Draft Final version of the Stakeholder Group Charter (Charter) with Stakeholder comments included in track changes. He explained that the Charter represents the rules of engagement for the proposed formal Stakeholder Group. Mr. Ceppos then reviewed each of the suggested changes and the Stakeholder Group discussed the pros/cons of ratifying the Draft Final Charter. The Stakeholder Group suggested a range of changes (see attached Draft Final Charter).

Mr. Ceppos explained that in an absence of the group having a "decision-rule" yet, the Charter would be decided by a simple majority vote of Stakeholder Group participants present (those individuals / organizations that have been invited to serve on the Stakeholder Group) Mr. Ceppos explained that (due to the lengthy and duplicative discussion about the validity of convening a formal Stakeholder Group, the results of the vote would be considered conditional until the Regional Water Board Executive Officer, had been consulted. The results were as follows: (2 abstentions, 1 no, 1 "conditional" no [the participant voted no to the Charter and the creation of a formal group but expressed desire to continue to serve on the group if it is approved], and 16 yeas.)

Stakeholder Comments on issues other than the text of the Draft Final Charter are summarized below:

Stakeholder Comment: Stakeholders worked very hard on the Guiding Principles; where are they going to go?

CCP Response: It was proposed in July that the MOI be one place the Guiding Principles could go. This remains up for discussion and resolution.

Stakeholder Comment: The problem is that a lot of Environmental Justice groups do not have the funds to participate in the Stakeholder Process. A grant from the Ford Foundation to UC Davis is being provided to three Environmental Justice groups: TODOS UNIDOS, California Indian Environmental Alliance, and United Cambodian Families. These funds came from a different mercury-related stakeholder effort in the Bay Area that did not successfully convene. The UCD

staff involved decided to re-direct these funds to the groups described above as a means to support the Delta MeHg TMDL effort.

CCP Response: Staff and CCP have created a memorandum describing the Environmental Justice process to date. This will be posted on the project website:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/tmdl/central\\_valley\\_projects/delta\\_hg/](http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/delta_hg/)

A conference call will be scheduled to discuss the proposed Environmental Justice strategy. The idea is to create an Environmental Justice caucus that would hold meetings these prior to full Stakeholder Group meetings and would allow for a conduit. The idea was to create three rotating seats to help ease the time commitment burden on caucus members.

Stakeholder Comment: Will the Stakeholder Group end in December 2009?

CCP Response: There has been no formal critical path for the Stakeholder Group past January 2010; however, it is expected that this group will continue in some form. CCP involvement will likely end in December 2009.

### **Offsets Work Group Next Steps**

Stephen McCord, Larry Walker Associates, gave a presentation on offset issues and what the Stakeholder Group has done thus far (see attached Offsets Presentation).

Stakeholders made the following comments regarding offsets:

Stakeholder Comment: If every discharger is over their load allocation, could the Stakeholder Group look at other reductions that might be more beneficial.

Mr. McCord Response: That is more classic trading and it implies that everybody participating in the offsets program. It is important to do something that would not otherwise happen.

Stakeholder Comment: Where in this proposal is encouragement for the discharger to reduce their load?

Mr. McCord Response: There is some inherent encouragement for individual dischargers to reduce their load; the natural tendency is to want to work locally.

Stakeholder Comment: What about ratio balancing and percentage lock in.

Mr. McCord Response: Staff will need to account for the ratios and uncertainty when assigning credits to different projects.

Stakeholder Comment: Do the current allocations include floodplains?

Staff Response: No. Floodplains were not included. This data (data shown in the presentation) was originally collected during a dry year.

Stakeholder Comment: If you look at all of California, everyone is going to be a MeHg source in one way or another. The reality of how to deal with that is hard to understand in terms of cost and resources. It is not going to be the usual carbon trading credit process.

Stakeholder Comment: Using settling basins could fix some of the mercury problems, but why would anyone create a settling basin if they know they are going to be held responsible for it. Positive projects need to be treated as offsets so organizations that manage them are not held solely responsible for the clean up of mercury.

Staff Response: Allocations in the BPA are not set according to how low Staff think dischargers can go; they are set so every discharger has to reduce by the same percentage amount.

Stakeholder Comment: There was some efficiency assumed for the Cache Creek Settling Basin that may not be feasible.

Staff Response: There needs to be a clarification between total mercury and allocations. Allocations for Cache Creek are not actually assigning reductions to just the Cache Creek Settling Basin, but rather to the whole system. Total mercury is not an allocation.

Mr. McCord Response: The allocations are not set on the ability to reduce. The Delta MeHg TMDL is really seven TMDL documents in one because Staff have proposed there be seven Delta subregions in the TMDL, each subregion having its own unique allocations. There is some question about trading across different areas of the Delta.

CCP Response: The Offsets Work Group is the next step for this issue. Patrick sent out a meeting poll for the week of October 19<sup>th</sup> to pick the Offsets Work Group meeting date. One of the things the Offsets Work Group needs to start to talk about is what would an offsets decision tree look like?

Staff Question: Should Staff move forward with some type of guidance on offsets in the BPA?

Stakeholder Response: Yes, this group needs to start working on the issue of offsets, it is important to know if something is going to be a viable offset or not.

Stakeholder Response: Some fundamental principles need to be included in the BPA committing that offsets are a viable tool.

Stakeholder Comment: Need side by side assurances that MeHg “hotspots” (discrete areas with very high levels of MeHg) are not going to be created.

Stakeholder Comment: How successful have offsets been in terms of achieving TMDL goals?

Mr. McCord Response: There are examples of successful offset programs, but mostly for nutrient and sediment TMDLs.

Stakeholder Comment: Strong supporter of offsets, and want to make it clear that offsets are one of the near-term solutions.

Stakeholder Comment: There may be opportunities for dischargers to partner up; if resources are pooled, will that count as a project?

Mr. McCord Response: The control studies are organized in the BPA by source category. At some point Staff will have to pull the data together and do what is best at the watershed scale.

Staff Response: Staff are fitting watershed level data into Phase 1 and have started exploring the watershed approach for allocation.

### **Review of September 17<sup>th</sup> Action Items**

#### Action Items Currently Underway:

- Staff reviewing U.S. EPA BPA comment letter submitted April 23, 2008 regarding COMM beneficial use.
- Staff consulting legal council to clarify difference between existing and potential use.
- Staff consulting legal council regarding what actions are required during the time period after the State approves the BPA but before the U.S. EPA has approved it.
- Staff consulting legal council regarding what latitude Regional Water Board has to adjust future compliance dates (specifically the 2030 date).
- Staff and Non-point Source dischargers are reviewing the 401 implementation program and determine which details belong in the MOI.
- Staff are clarifying the use of “shall” and “should” throughout BPA.
- Stakeholders are continuing to clarify how the Regional Water Board may provide incentives to dischargers.
- Staff and CCP are convening the next Non-point Source Workgroup Meeting.
- Staff and CCP are convening the next Offsets Work Group discussion.
- Lysa Voight is review Lines 60 and 69 of the BPA Comment Table and drafting text regarding potentially extending the completion date for the Phase 1 studies if the Regional Water Board determines that dischargers are making significant progress.

#### Action Items Completed:

- Staff added referenced material as an attachment and include a website url in BPA text to provide greater clarity.

- Staff has dated all versions of the BPA in order to provide clear guidance as to which one is the latest version.
- Andria Ventura provided proposed text regarding switching paragraphs 2 and 3 in the September 2nd BPA.
- Staff sent the proposed Phase 1 schedule to Mark List.
- The Stakeholder Group submitted comments on the September 2 version of the BPA by close of business September 22<sup>nd</sup>.
- CCP distributed the action items from the September 17<sup>th</sup> Stakeholder Meeting mid day, September 23<sup>rd</sup>.

Action Items to be completed in the Future:

- Staff will revisit whether the MOI should address the issue of whether to use .06 ng/L as part of the Phase 1 studies.
- Mark List will convert the proposed Phase 1 schedule into MS Project.
- DWR will actively consult Staff regarding future projects in the Cache Creek Settling Basin.

**Next Steps in the Process**

- Staff are still working on several of the BPA issues that were brought up at the September 17th meeting.
- Staff are considering the Phase 1 time schedule. Proposing to keep the compliance date at 2030 and review when the board reviews.
- Staff will compile list of key issues in the BPA.
- Mark List will send the MS Project Phase 1 schedule to Patrick on Tuesday, October 6<sup>th</sup>.
- Staff will distribute list of key issues and Phase 1 MS Project Schedule by October 7<sup>th</sup>.
- Staff will review the MOI text and identify the text that they think should be put into the BPA and send out to the Stakeholder Group on Monday October 12th.
- CCP will organize an MOI Work Group Meeting.
- Staff will distribute the BPA on October 12<sup>th</sup>.

- Staff will work on defining the MOI in advance of the materials going out on October 12<sup>th</sup>.

**Adjourn**

## **October 1 Delta MeHg TMDL Stakeholder Group Meeting Attendees**

Alex Naughton	Shaw E&I
Andria Ventura	Clean Water Action
Bob Schneider	Tuleyome
Bruce Houdesheldt	Northern California Water Association
Christal Love	Center For Collaborative Policy
Dave Ceppos	Center For Collaborative Policy
Debbie Webster	CVCWA
Diane Fleck	U.S. Environmental Protection Agency
Eric Milsten	California State Lands Commission
Erich Delmas	City of Tracy
Greg Giannonatti	City of Roseville
Holden Brink	BLM Cosumnes River Preserve
Hong Lin	City of Sacramento
Jacquelyn Pimental	Department of Water Resources
Janis Cooke	Central Valley Regional Water Quality Control Board
Jeff Willett	City of Stockton
Jeff Wingfield	Port of Stockton
Judi Quan	Delta Protection Commission
Kari Fisher	California Farm Bureau Federation
Lysa Voight	Sacramento Regional County Sanitation District
Mark List	DWR Division of Flood Management
Michelle Wood	Central Valley Regional Water Quality Control Board
Mike Wackman	San Joaquin County & Delta Water Quality Coalition
Nancy Moricz	Central Valley Flood Protection Board
Pablo Garza	The Nature Conservancy
Patrick Morris	Central Valley Regional Water Quality Control Board
Paul Buttner	California Rice Commission
Rudy Rosen	Ducks Unlimited
Sally Liu	The Nature Conservancy
Sherri Norris	California Indian Environmental Alliance
Stephen McCord	Larry Walker Associates
Steve Mindt	California State Lands Commission
Terrie Mitchell	Sacramento Regional County Sanitation District
Tim Stevens	CA Dept of Fish and Game
Tom Grovhoug	Larry Walker Associates
Tony Pirondini	City of Vacaville
Victor Chan	Solano County

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**Section 1 - Project Purpose and Background**

The Central Valley Regional Water Quality Control Board's (Water Board) Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) was initiated by the Water Board's 1990 303(d) listing of the Delta for mercury. The Water Board identified the Delta as impaired by mercury because Delta fish have elevated levels of MeHg that pose a risk for human and wildlife consumers. The Water Board's development of a water quality attainment strategy to resolve the mercury impairments in the Delta has two components: the MeHg TMDL for the Delta and the amendment of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to implement the TMDL program.

The TMDL development and Basin Planning and amendment process involves:

1. Technical analysis of the extent of impairments and methyl and total mercury sources;
2. Identification of a range of possible water quality objectives that correspond to safe levels of MeHg in fish tissue that are protective of reasonably protect humans and wildlife that consume Delta fish;
3. Identification of a range of possible implementation program (Implementation Plan) options and corresponding source reductions strategies needed to attain safe fish tissue MeHg levels;
4. Environmental analysis of the potential impacts of reasonably foreseeable methods of compliance with the recommended implementation program to comply with the California Environmental Quality Act (CEQA).

**Comment [CML1]:** DW: This should more closely reflect Porter-Cologne which requires reasonable protection of beneficial uses.

Items 1 and 2 above are collectively referred to as the "TMDL Report". For the purpose of this Charter, the TMDL Report and Implementation Plan are collectively referred to as the TMDL which also will include the proposed Basin Plan Amendment (BPA). A draft TMDL report was first released for public review in August 2005. A revised draft TMDL report and draft Basin Plan Amendment (BPA) staff report was released in June 2006 for scientific peer review. In February 2008 updated versions of the proposed TMDL were released for public review. This was followed by a Water Board hearing in April 2008 at which, based on significant stakeholder input, the Water Board agreed to start a comprehensive and inclusive stakeholder process to reconcile increasing differences of opinion regarding the scale and efficacy of the proposed TMDL. In Summer 2008, the Water Board created an interagency agreement with the California State University Sacramento, Center for Collaborative Policy (CCP) to act as a third-party neutral and convene the stakeholder process. In Fall 2008, CCP conducted a standardized Stakeholder Assessment, through which they interviewed over 50 stakeholders.

**Comment [CML2]:** DW: May need to be more specific as we talk about a technical TMDL with an adaptive management program. I have been confused as to the way we will be implementing this approach and the requirements for specific language in the Basin Plan.

From the Assessment, CCP identified issues that can be easily resolved, issues that appear intractable but may benefit from negotiations, and related information. With this information, CCP proposed an approach for stakeholder involvement in the TMDL process, and to support a phased, adaptive approach to TMDL implementation. Regarding this phased approach, the Water Board's mercury control program is intended to include two phases. During Phase 1 (currently presumed to be through eight years after the effective date of approval of the Basin Plan Amendment (BPA), dischargers and State agencies will conduct mercury and methylmercury characterization and control studies. Phase 1 is intended to include:

- actions to minimize increases in mercury and methylmercury discharged to the Delta.
- development of a program to reduce mercury related risks to humans.
- development of mercury control programs for tributaries to the Delta.

Throughout Phase I, the Regional Board will address key Program milestones. These milestones will occur at predetermined dates and/or Program conditions. The milestones will reflect key points in Phase 1 that require Board analysis of Program progress.

At the end of Phase 1, the Water Board is expected to re-evaluate the methylmercury allocations for all sources and consider adjustments to the methylmercury allocations, compliance schedule, and implementation of the Delta Mercury Control Program (based on the information from Phase 1 and other activities). The Water Board will involve stakeholders in the program review and will consider possible adjustments in a public hearing.

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Phase 2 is intended to start after the Water Board reviews and considers amendments to the Delta Mercury Control Program and upstream control programs are adopted. Phase 2 will likely require discharge implementation of the mercury and methylmercury controls developed in Phase 1. Prior to implementing Phase 2, the Water Board will consider the technical and economic feasibility of potential total mercury and methylmercury control methods and to minimize or avoid significant negative impacts to the environment that may results from control methods. Phase 2 is currently expected to extend from eight years after the effective date of the BPA through 2030.

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This Charter describes the ~~proposed~~ purpose, roles, responsibilities, rules and process that the ~~proposed~~ TMDL Stakeholder Group (Stakeholder Group) ~~may will~~ fulfill. The purpose of the Stakeholder Group is to provide input on matters related to the development of the TMDL. Specifically, the Stakeholder Group will advise and provide comment to Water Board staff (Staff) on the development of the TMDL and associated documents. Presuming TMDL approval by the Water Board, State Water Resources Control Board (SWRCB), and US Environmental Protection Agency (EPA), the Stakeholder Group (and this Charter) may be modified to address TMDL implementation.

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Stakeholder Group participants are expected to review and evaluate TMDL program components and implementation measures. They are expected to comment on all aspects of the TMDL. The proposed recommendations will be used by Staff to develop a TMDL Report and ~~Basin Plan Amendment~~ BPA. Given the expeditious Stakeholder Group schedule, it is understood that the Implementation Plan will be flexibly designed to adapt to future information needs and with future information sources. For the purpose of this Charter, it is commonly understood by Stakeholder Group participants that the Implementation Plan will address aspects of the "governance" of TMDL implementation. Governance will be informed by the combined use of several documents. These documents include the mandatory TMDL report, and BPA, both of which will undergo formal review and approval by the Water Board, State Board, and USEPA. Additional governance documents making up the Implementation Plan may include a non-binding "memorandum of intent" that will be developed by the stakeholders and Water Board as a means to define what adaptive steps may be taken at different times to implement the phased TMDL. It will also include an implementation control study workplans which may memorialize formal agreements and intentions between stakeholders regarding what steps, studies, and other actions they will take during the different TMDL phases.

**Section 2 – Draft Schedule and Milestones (TO BE EXPANDED)**

Date	Program Element
December 2008	Kickoff meeting. Review outcomes of Stakeholder Assessment Report. Introduction of bifurcated process.
January 2009	Review key issues
February 2009	Formation of various Workgroups (see below)
July 2009	Staff prepare Preliminary Draft Basin Plan Amendment (BPA)
July – December 2009+0	Staff and Stakeholder Group refine BPA and develop the draft "memorandum of intent" and "implementation workplan"
January 2010	Board hearing to review staff Delta MeHg TMDL recommendations

Comment [CML3]: ML: Dates do not appear appropriate. Refining BPA listed as July-December 2010 (likely intended as 2009?). Board hearing listed as January 2010. Either the year for lines 15-16 needs to be 2009 or Board meeting needs to read 2011

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**Section 3 - Stakeholder Group Organization**

No stakeholder group can be completely inclusive. Time, budget, and size considerations mandate that a stakeholder group must be a representative and manageable cross-section of interests rather than a collection of all parties.

**3.1 - Participant Selection**

The Stakeholder Group will represent a comprehensive cross-section of stakeholders directly affected by the TMDL and its implementation plan. These stakeholders will be invited to participate in the process and to provide formal letters of interest and commitment to the Water Board Executive Officer (EO). The letters of interest should ideally come from the highest level of authority possible within the participant's respective organization and should confirm the organization's intent to fully participate in the process. To the extent possible, the Stakeholder Group will be limited in size to a group of representatives that will act on the behalf of their interest groups. Specific distribution of the numbers of stakeholders representing each interest will be decided by the EO, with the advice of ~~the a~~ neutral facilitator ~~from CCP~~. Whenever possible and acceptable to affected stakeholders, Stakeholder Group participants should represent multiple similar organizations as a means to ensure representation while maintaining a feasible Stakeholder Group size. Stakeholder Group participants are expected to have some knowledge and understanding of the current Delta MeHg TMDL. Proposed interest groups to be represented are presented in Attachment A.

**Comment [CML4]:** ML: No letter of interest/commitment has been provided by DWR-Division of Flood Management, however, we continue to participate as fully in the process as is possible, as time and resources allow. No "letter of commitment or participation" should be expected.

Due to the necessary timeframe to develop the TMDL, and the specific recommendations that will be developed at each meeting, it is not optimal to add new participants to the Stakeholder Group once started. Should a stakeholder request inclusion to be a participant on the Stakeholder request Group after the process has started, (rather than participating as a public meeting attendee) they are expected to do the following:

1. Contact the Water Board Project Manager, Patrick Morris, (916) 464-4621, pmorris@waterboards.ca.gov, and identify an interest to become a Stakeholder Group participant.
2. Attend the next available meeting and describe to the Stakeholder Group, their desire to become a participant. Stakeholder requests should include a description of the following:
  - Rationale of the stakeholder niche not currently filled by an existing participant.
  - Description of how the stakeholder is reasonably and directly affected by the Program.
  - Willingness to commit the resources and time necessary to be an active participant on the Stakeholder Group.
  - Willingness to review previous documents prepared by and/or for the Stakeholder Group (i.e. meeting summaries, draft and final reports, etc)
  - Willingness to ~~accept~~ consider all Stakeholder Group recommendations to-date and a commitment to provide counter proposals that reconcile the interests served by the Stakeholder Group's existing decision, with the interests of the new member. an understanding that previously agreed on items will not be revisited based on his or her interests.
3. The Stakeholder Group and Water Board staff will discuss the stakeholder request. Final determination of inclusion will be provided by the EO with advice from the neutral third party facilitator.

**Comment [CML5]:** DW: Although included in the charter that they will be barred from revisiting issues already discussed, there should probably be a commitment on the part of the new participant to review existing documents so that they are up to speed (to the extent that this information is available) on the TMDL process.

NOTE: As of the initial, conditional ratification date of this Charter, several stakeholders intended and/or invited to participate in the Stakeholder Group have not participated. These include some Environmental Justice representatives, one proposed Environmental Health organization representative, a State public health agency

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1 representative, a California Department of Fish and Game, CALFED / Ecosystem Restoration Program  
2 representative, and a Bay Delta Conservation Planning process representative and a local county representative.  
3 Efforts will continue to be made by the Water Board to ensure additional participation by these proposed  
4 stakeholders.

5  
6 **3.2 - Participant Responsibilities**

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8 Participants on the Stakeholder Group will attend meetings; report back to the organization(s) they represent;  
9 and communicate the interests, concerns, and recommendations of their organization(s) and constituents to  
10 the Stakeholder Group. Participants should attend every meeting or arrange for alternates (see below) to  
11 attend on their behalf. If possible, participants should notify Water Board staff in advance of anticipated  
12 absences. All Stakeholder Group meetings will be open to the public and will be publicized to encourage  
13 public attendance. However, the Stakeholder Group will always represent a select group of representative  
14 stakeholders within this larger public meeting context. Public comments will be received at each meeting so  
15 that Stakeholder Group participants are informed by the larger populace. The Stakeholder Group will take  
16 such public comments as advice to their deliberations and recommendation process.

17  
18 Alternates: Stakeholder Group participants may need an Alternate due to their respective schedules and  
19 the pace of the Stakeholder Group meetings. Alternates will be identified by each participant requiring  
20 one. ~~When a participant must miss a meeting, they will notify the facilitator and Water Board project staff~~  
21 ~~as soon as feasible before a meeting and will coordinate the attendance of their Alternate.~~ Participants  
22 are encouraged to use the same Alternate every time to ensure the highest degree of institutional  
23 memory about the process. ~~The facilitator will meet (in person or via telephone) with the participant and~~  
24 ~~Alternate to ensure shared understanding of the participant's perspectives about any items due for~~  
25 ~~discussion at the pending meeting.~~

**Comment [CML6]:** LV: Charter is that the process indicated for the alternate stakeholder representatives is too formal. The alternate should be treated just like the primary representative and not require special phone calls or coordination.

26  
27 **3.3 - Participant Replacement/Succession**

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29 If a participant is no longer able or willing to attend meetings, said individual will notify the Water Board staff in  
30 writing of his/her resignation and will recommend a replacement. The recommendation will include the  
31 participant's rationale about why the replacement is appropriate. The facilitator will coordinate new participant  
32 orientation after their appointment. All participants should maintain a comprehensive record of their activities  
33 and personal work to be passed along to a replacement, if necessary. The facilitation team will also do so.

**Comment [CML7]:** DW: With the recommendation of a replacement should come some reasoning or justification as to why this is the appropriate person.

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35 **3.4 - Water Board Responsibilities**

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37 Water Board staff, the facilitation team and Stakeholder Group participants will work collaboratively to develop  
38 agenda topics and other materials related to the development of the TMDL. All meeting materials will be  
39 distributed as early as possible before a scheduled Stakeholder Group meeting.

40  
41 Summaries of Stakeholder Group discussions and recommendations will be recorded at all meetings by  
42 Water Board staff and/or neutral facilitation team staff. The summaries will be distributed to Stakeholder  
43 Group participants and made available to the public on the TMDL project website ([www.deltamehgtml.net](http://www.deltamehgtml.net)),  
44 and the Water Board's website  
45 ([www.swrcb.ca.gov/rwqcb5/water\\_issues/tmdl/central\\_valley\\_projects/delta\\_hg/index.shtml](http://www.swrcb.ca.gov/rwqcb5/water_issues/tmdl/central_valley_projects/delta_hg/index.shtml)). Meeting  
46 information and TMDL updates will also be circulated via email on the Water Board's email listserv.

**Comment [CML8]:** DW: Meeting notes and materials have not been posted and the links between the two websites could be strengthened.

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48 Water Board members will be informed of the progress of the Stakeholder Group in a variety of ways,  
49 including, but not limited to: EO reports and informational items at Water Board meetings as needed,  
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1 attendance at Stakeholder Group meetings by Board members when possible, public comment at Board  
2 meetings by Stakeholder Group participants. If needed, a Water Board workshop and/or subcommittee can  
3 also be convened.

4  
5 Water Board staff will be responsible for the following:

6  
7 *Stakeholder Group Input and Products:* Stakeholder Group ~~members~~ participants will make a substantial  
8 investment of time and resources to develop recommendations for the TMDL. This time commitment is in  
9 addition to any investment participants make in the formal review and comment process as part of the  
10 adoption of the TMDL by the Water Board, SWRCB, and EPA. To ensure all participants positively benefit  
11 from this process, Water Board staff and the EO will make the following commitments:

- 12
- 13 1. Thoughtfully and objectively consider all Stakeholder Group comments and recommendations;
- 14 2. Communicate all Stakeholder Group participants' recommendations and associated rationale to  
15 Water Board members;
- 16 3. Address the stated interests of Stakeholder Group participants to the extent allowed by the Water  
17 Board's legal mandates

18 At a minimum, Stakeholder Group products, recommendations, and feedback will be described in the  
19 revised BPA staff report and administrative record.

20  
21 *Program Coordination:* TMDL project staff will communicate and coordinate Stakeholder Group ideas  
22 and alternatives with other Water Board programs and local, state, federal, and tribal agencies. Staff will  
23 consider all Water Board Programs in general, but will focus coordination efforts with the Total Maximum  
24 Daily Load (TMDL), and Basin Planning Programs. Coordination efforts will include: enlisting the help of  
25 other program staff to comment on Stakeholder Group products, MeHg presentations at Stakeholder  
26 Group meetings (as needed), and regularly scheduled coordination meetings among staff.

### 3.5 - Consultant Responsibilities

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31 Facilitation services will be provided to support the Stakeholder Group process. The facilitator and  
32 facilitation team serves as a "professional neutral" whose primary responsibility is to ensure an open  
33 process where all participants' interests, views and opinions are heard and thoughtfully considered.  
34 Specific responsibilities of the facilitator include:

- 35 • Design and conduct a consensus-seeking process where the Stakeholder Group can best assist the  
36 TMDL process.
- 37 • Facilitate meetings and generate draft agendas and meeting summaries.
- 38 • Capture the range of views and ideas presented by participants and report on where there are areas  
39 of agreement and differences.
- 40 • Develop preliminary draft proposals that reflect participants' discussions and project opportunities
- 41 • Assure that Stakeholder Group participants have seven days to respond to information or requests  
42 submitted between meetings.

### 3.6 - Meeting Methods

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The goal of the Stakeholder Group is to develop consensus recommendations (as described in Section 3.7) for Water Board staff to incorporate into the TMDL BPA, and for stakeholders to incorporate into a “Memorandum of Intent” or other similar document, and a related TMDL Implementation Workplan all related topics that will not go into the BPA. The timeframe of the process, and the fact that final decisions on the TMDL are made by the Water Board, SWRCB, and EPA limits the responsibilities of the Stakeholder Group to an advisory capacity. Consensus may not be feasible and is not required by the stakeholders. Therefore, the Stakeholder Group will seek consensus, rather than be mandated to achieve consensus on all topics. The decision to proceed with a recommendation absent a consensus will be based on discussions between Water Board staff and the Stakeholder Group; however, final determination on whether to continue seeking consensus will be made by Water Board staff and the EO. If consensus is not reached on a given topic, the range of recommendations supported by the different interests will be documented for staff and Water Board consideration. Any reports developed for the Water Board by staff or the stakeholders will describe Stakeholder Group consensus recommendations and non-consensus items.

**Comment [CML9]:** DW: Refer to section 3.7 on decision making protocols to help direct the document as to what is meant by consensus.

Full Stakeholder Group meetings are expected to occur approximately once a month. Stakeholder Group meetings will not occur based on a quorum but rather, will proceed with the available participants. Decisions will be made as agendaized. With the exception of administrative-type decisions (e.g. meeting logistics), no TMDL decisions will be made by the Stakeholder Group if the topic and decision milestone have not previously been communicated via the agenda to the full Group. The facilitator may periodically ask for a “conditional agreement” in a meeting without having memorialized this request in advance. A conditional agreement will reflect a non-binding survey of the Stakeholder Group participants present and will be asked when a general sense of direction is needed from the Group to proceed with some next level discussions or actions.

Workgroups. Workgroups will be created as needed to address specific topics (i.e., geographic, technical, policy, etc). In general, the goal of Workgroups will be to discuss and refine a topic and provide a range of recommendations (or single recommendation if feasible) to the larger Stakeholder Group for its consideration and decision process. Workgroup composition will consist of any willing and interested Stakeholder Group members and other volunteers / stakeholders as reviewed and approved by the Stakeholder Group (see decision-making process). All Workgroup meetings will be open to the public (whether in person or via conference call options). Agendas and meeting notes will be posted on the Delta TMDL websites.

Workgroups will seek consensus but will not spend significant time negotiating unanimous agreements. Because of their advisory role, consensus is not required. Time spent to achieve consensus will be at the discretion of the workgroup and their facilitator (if present). Workgroup work products will present recommendations for Stakeholder Group consideration. All work products should include a description of the steps taken, and the discussions held by the workgroup to create the recommendation(s). In the event that multiple and/or conflicting recommendations are created and can not be resolved to a unanimous conclusion, the workgroup is expected to memorialize the range of recommendations they create and to describe the steps taken to resolve differences. In these circumstances, the workgroup should avoid identifying majority or minority numerics of specific proponents. However, it is reasonable (with the approval of all workgroup members) for recommendations to be attributed to a specific stakeholder type(s). This approach should also be practiced by the full Stakeholder Group as it develops its documents. In the event that a workgroup participant(s) must revise their perspectives / recommendations and thus impact the work of the group so far, that participant is expected to describe to the other participants why they are pursuing this change so that all participants have shared understanding. Workgroup work products will be presented to the full Stakeholder Group membership and will be publicly available on the Delta TMDL websites. Workgroups may follow (at the discretion of all workgroup

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members) the standard document development protocols used for full Stakeholder Group documents (e.g. preliminary draft, draft, draft final, final – as described below).

**Comment [CML10]:** DW: This section has not addressed stakeholders going back on previously agreed on principals or items. How is this handled in these situations?

### 3.7 - Decision-Making Protocols

The consensus decision rule is based on principles of “consensus with accountability”. Consensus with accountability requires all participants to try to reach consensus while at all times supporting and expressing their self-interest. In the event a participant must reject a proposal, that participant should provide a counter proposal that legitimately attempts to achieve their interest, and the interests of the other participants. The Stakeholder Group will not vote and will not seek to identify numeric “winners and losers” on key topics. Rather, the Stakeholder Group will seek mutually acceptable and beneficial conclusions.

In seeking consensus on an interim or final recommendation, participants will voice their opinions with specific proposals along the way, rather than waiting until a final recommendation has been developed. At all times, participants will ensure that they are providing input commensurate to their prescribed role and constituency regarding the TMDL. The basic decision-making process will be as follows:

Straw Polls: Participants will use straw polls to assess the degree of preliminary support for an idea before it is submitted as a formal proposal for final consideration by the Stakeholder Group. Participants may indicate only tentative approval for a preliminary proposal without fully committing to its support. This method will be used when the facilitator seeks a conditional agreement (as described in Section 3.6)

Draft and Final Decisions: The Stakeholder Group will use the following three levels to indicate participants' degree of approval and support for any proposal being considered and to determine the degree of consensus.

Thumbs Down:	I do not agree with the proposal. I feel the need to block its adoption and propose an alternative.
Thumbs Sideways:	I can accept the proposal.
Thumbs Up:	I think this proposal is the best choice of the options available to us.
Abstention	At times, a pending decision may be infeasible for a participant to weigh in on. Examples could include but not be limited to: a topic that has statutory implications that an agency representative can not be on record conflicting with; a participant can not get a consensus of his/her partners and therefore can not offer a proposal or opinion; and other similar conditions.

The goal is for all participants to be in the 'Thumbs Up', or Thumbs Sideways' levels of agreement. The Stakeholder Group will be considered to have reached consensus if all participants are at those two levels. If any participant is at a 'Thumbs Down' level, that participant must provide a counter proposal that legitimately attempts to achieve their interest and the interests of the other participants. The Stakeholder Group will then evaluate how best to proceed. Participants that abstain from particular proposals are encouraged to explain why abstention is in their best interest.

The Stakeholder Group will not revisit previously agreed to recommendations, alternatives or evaluation measures unless new information is brought to light that would likely affect the outcome of the Group's previous work.

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**3.8 - Communication protocols**

Stakeholder Group participants and their Alternates serve as conduits for two-way information exchange with their constituencies. Constituents wanting to provide input to the process are encouraged to channel their concerns and suggestions through their individual participants on the Stakeholder Group. Stakeholder Group participants will make a concerted outreach effort to communicate regularly with their agencies or constituencies to keep them informed about the process and the issues under discussion.

Stakeholder Group participants will in no way be prohibited from speaking with the media, but must indicate that they are providing their individual perspectives and are not speaking for the group. Participants should neither characterize the positions and views of any other party nor should they ascribe motives or intentions to the statements or actions of other Stakeholder Group participants.

A list of Stakeholder Group participants will be made available to the public on the Water Board's website. The list will include the following information: participant name and represented interest(s). Should an interested party have focused comments for a Stakeholder Group participant, the individual(s) will be encouraged to work through Water Board staff to convey the comments to the appropriate Stakeholder Group participant(s).

Meeting Summaries will be prepared and distributed to Stakeholder Group participants by the facilitator and Staff following each meeting. Summaries will identify the meeting participants, major issues discussed, decisions made, and actions to be taken. Participants will have 5 business days to review DRAFT summaries and provide comments to the facilitator (and other participants if desired). The facilitator will revise summaries and send a DRAFT FINAL version to the Stakeholder Group. Any conflicts between two or more participant's summary reviews will be resolved by the facilitator with the participants in question. DRAFT FINAL Summaries will be reviewed at the next Stakeholder Group meeting. The facilitator will call for any further revisions by participants to ensure the correct characterization of all comments. New comments will be addressed by the facilitator with the participant at the next meeting. If no comments are received, the Summary in question will be entered into the project record as a FINAL document.

**Comment [CML11]:** DW: This step has been missing except for the first meeting. How are we going to capture the discussions to this point?

Meeting Action Items will be prepared and distributed to Stakeholder Group participants by the facilitator and Staff within 2 business days following each meeting.

Public notice and public accessibility to meeting materials will be posted on the Water Board's Project website for all Stakeholder Group and Group related meetings (i.e. Workgroups, formally convened Caucuses, etc).

**Section 4 - Information Publication**

Materials will be prepared / provided on a regular basis to support the Stakeholder Group process. These include the following materials and general sequence for development and distribution (subject to flexibility as agreed on by the Stakeholder Group).

**4.1 - Document Development.**

Documents being developed for and by the Stakeholder Group and Workgroups will follow a general sequence of completion. All the following stages of a document will be dated to ensure that users have the most current version.

**Comment [CML12]:** DW: Suggest adding workgroups to the inclusion of this section

DW: Workgroups would also benefit by memorializing this process, at least through the first two bullets under this item.

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- 1       ○ **Informational** documents prepared for the Stakeholder Group will be initially distributed in DRAFT  
2       format. These documents are for information purposes only. They may be subject to comments and  
3       revisions by Members and will be finalized to FINAL stage at some point in the Forum process.  
4
- 5       ○ **Decision** documents prepared by the Stakeholder Group will be initially distributed in PRELIMINARY  
6       DRAFT format. These documents will reflect ongoing work by the Group that will eventually be  
7       revised to DRAFT status. All DRAFT and PRELIMINARY DRAFT documents are for discussion  
8       purposes only and will not be cited.  
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- 10      ○ DRAFT **decision** documents will be revised through Stakeholder Group discussions. When a  
11      DRAFT document reflects an appropriate level of completion by the Group, it will be re-titled as  
12      DRAFT FINAL.  
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- 14      ○ All **decision** documents will remain in a DRAFT FINAL stage until they are ratified by the Stakeholder  
15      Group as completed, at which point a document will be re-titled as FINAL.  
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- 17      ○ FINAL documents may be revised at the discretion of the Stakeholder Group. Generally speaking,  
18      FINAL documents should only be revised if new information is identified that makes the conclusions  
19      of the Forum insufficient. FINAL documents that are revised will be titled REVISED FINAL.  
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21      **4.2 – Charter Revision and Amendment**

← - - - - Formatted: Bullets and Numbering

22      This Charter is subject to revision and amendment. If a proposed revision is identified, a participant will  
23      communicate this to the facilitator and ensure the topic and proposed revision is agendaized for a following  
24      meeting. No revision of the Charter will take place without prior communication to the Stakeholder Group that the  
25      topic will be addressed. The participant(s) proposing the revision will describe the proposed revision to the  
26      Stakeholder Group participants present and the Group will vote. The Charter will be revised by a simple majority  
27      vote of Stakeholder Group participants present.  
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29      **Section 5 – Stakeholder Group Ground Rules**

30      All Stakeholder Group participants, the facilitator, and public participants of a meeting agree (to the extent  
31      feasible) to:

- 32      • Arrive promptly to all meetings and be prepared for the meeting agenda.
- 33      • Stay for the duration of the entire meeting.
- 34      • Turn cell phones to silent.
- 35      • Minimize actions that could be distracting to participants discussions. Should meeting attendee behavior  
36      become distracting to participants, those individuals should speak with the facilitator to intervene.
- 37      • Participate in a problem-solving approach based on respectful and constructive dialogue, where the  
38      interests of all participants and the public are considered in developing proposals and recommendations.
- 39      • Openly discuss issues with others who hold diverse views; acknowledge and seek clarification of others'  
40      perspectives; and verify assumptions when necessary.
- 41      • Assure that all participants are heard and that one person speaks at a time. Refrain from side  
42      conversations.
- 43      • Keep commitments once made.
- 44      • When appropriate, distinguish between personal vs. organizational perspectives.
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1 All Stakeholder Group meetings are open to the public and observers are welcome. All public participants are  
2 expected to abide by the Ground Rules described above. Periods for public comment will be scheduled into each  
3 meeting agenda.  
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Attachment A  
Proposed Stakeholder Group Participants

<b>STAKEHOLDER / STAKEHOLDER TYPE</b>	<b>PROPOSED MEMBERS</b>
<b>Private Habitat Conservation Advocates</b>	
Ducks Unlimited	Rudy Rosen
Nature Conservancy	Sally Liu / <a href="#">Pablo Garza</a>
<b>Delta Dredging</b>	
Port of Sacramento	Tom Sheeler
Port of Stockton	Jeff Wingfield
US Army Corps	TBD
<b>Environmental Justice Caucus</b>	PROPOSED: 3 Rotating Participants to be selected by a Environmental Justice Caucus
<b>Environmental and Public Health Advocates</b>	
Clean Water Action	Andria Ventura
<del>Environmental Justice Coalition for Water</del> <a href="#">TBD</a>	TBD
<b>Regional Water Treatment Dischargers (POTW)</b>	
Central Valley Clean Water Association	Debbie Webster
City of Vacaville	Tony Pirondini
Sacramento Regional County San. Dist	Terrie Mitchell
<b>Public Health Agencies</b>	TBD
<b>Regional Watershed Issues</b>	
Tulyome / Sierra Club - Yolano Group	Bob Schneider
<b>Regional Agricultural Representatives</b>	
California (CA) Rice Commission	Paul Buttner
California Farm Bureau	Kari Fisher
Northern California Water Assoc	Bruce Houdesheldt
<b>Delta Agricultural Representatives</b>	
South Delta Water Agency	John Herrick
<b>Regional Stormwater Agencies</b>	
Sacramento Urban Area	Hong Lin
Stockton Urban Area	Jeff Willet
<b>Delta County Governments</b>	1 Rotating Representative appointed by Delta Counties Coalition

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2	<b>Delta Environmental Advocates</b>	
3	California Sportfishing Protection Alliance	Richard McHenry
4	Restore the Delta	Barbara Barrigan-Parrilla
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6	<b>CA Dept. of Fish and Game Water Branch (DFG)</b>	Tim Stevens
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8	<b>CA DFG CALFED</b>	TBD
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10	<b>CA Dept of Water Resources, Division of</b>	Marianne Kirkland
11	<b>Environmental Services</b>	
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13	<b>CA Central Valley Flood Protection Board</b>	Dan Fua
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15	<b>DWR Division of Flood Management</b>	Mark List
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17	<b>CA State Lands Commission</b>	Steve Mindt
18		
19	<b>Central Valley RWQCB</b>	Patrick Morris
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21	<b>US EPA Region 9</b>	Diane Fleck
22		
23	<b>US Fish and Wildlife Service</b>	Tom Maurer
24		
25	<b>Bay Delta Conservation Plan</b>	Karla Nemeth
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27	<b>POTENTIAL TOTAL</b>	<b>34</b>
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30 [DW: Debbie Webster](#)  
31 [ML: Mark List](#)  
32 [LV: Lysa Voight](#)  
33 [TNC – The Nature Conservancy](#)  
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