

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

**Stakeholder Informational Meeting
Draft Meeting Summary**

MEETING DATE: September 17, 2009

LOCATION: Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

ATTENDEES: See attachment

ACTION ITEMS

Item	Responsible Party
Review U.S. EPA Basin Plan Amendment (BPA) comment letter submitted April 23, 2008 regarding COMM beneficial use.	Patrick Morris, Regional Water Board (Water Board)
Consult legal council to clarify difference between existing and potential use.	Water Board; State Water Board; U.S. EPA
Add referenced material as an attachment or include a website url in BPA text to provide greater clarity.	Patrick Morris, Water Board
Date all versions of the BPA and provide clear guidance as to which one is the latest version.	Patrick Morris, Water Board
Provide proposed text regarding switching paragraphs 2 and 3 in the September 2nd BPA.	Andria Ventura, Clean Water Action
Evaluate whether the Memorandum of Intent (MOI) should address the .06 ng/L as part of the study.	Michelle Wood, Water Board
Send phase 1 schedule to Mark List.	Patrick Morris, Water Board
Convert the phase 1 schedule into MS Project.	Mark List, Department of Water Resources (DWR)
Consult 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.	Patrick Morris, Water Board
Clarify what latitude Regional Water Board has to adjust future compliance dates (specifically the 2030 date)	Patrick Morris, Water Board
Review the 401 implementation program and determine which details belong in the MOI.	Patrick Morris, Water Board; Sally Liu, TNC; Rudy Rosen, Ducks Unlimited
Clarify use of shall and should throughout BPA	Patrick Morris, Water Board
Clarify how the Regional Water Board may provide incentives to dischargers	Stakeholder Group
Convene next Non-point Source Stakeholder Group Meeting	Patrick Morris, Water Board; Dave Ceppos, Center for Collaborative Policy (CCP)
Actively consult Regional Water Board Staff regarding future projects in the Cache Creek Settling Basin.	Mark List, DWR
Review Lines 60 and 66 of the BPA Comment Table	Lysa Voight, SRCSD
Submit comments on the September 2 version of the BPA by close of business September 22nd	Stakeholder Group
Distribute action items from September 17 th Stakeholder Meeting by mid day September 23rd	Christal Love, CCP

MEETING PURPOSE

- Review and finalize the Draft Final Stakeholder Group Charter
- Review revised Delta Methylmercury TMDL BPA and comment table
- Continue development of Draft MOI

MEETING SUMMARY**Welcome, Introductions, and Agenda Review**

Dave Ceppos, Center for Collaborative Policy (CCP) facilitator, opened the meeting, discussed facility logistics, meeting materials and asked meeting participants to introduce themselves. He then reviewed the meeting agenda, explaining that the Stakeholder Charter discussion would be moved to a future meeting. Mr. Ceppos then provided an update on Stakeholder process funding.

Review Revised Delta Methylmercury TMDL Basin Plan Amendment and Comment Table

Patrick Morris, Regional Water Board (Water Board) Project Manager, thanked Stakeholders for submitting comments on the September 2nd version of the BPA. He explained that any comments received after noon September 16th were not included in the BPA comment table handout. Mr. Morris proceeded to walk the group through the BPA comment table. The following discussion is organized by BPA paragraph row number.

***Row 1:** Revise Chapter II (Existing and Potential Beneficial Uses), Table II-1 for Sacramento San Joaquin Delta, to add as follows:
Sacramento San Joaquin Delta (8,9,e)*

Footnote: (e) in addition COMM is designated for the Sacramento San Joaquin Delta waterways listed in Appendix 43 and not any tributaries unless specifically designated.

Mr. Morris explained that the COMM designation has been an ongoing discussion at the Regional Board, and that they are working with legal council to resolve this issue (see **Action Item List**).

Stakeholder Comment: In order to be an existing use, the water quality has to exist. Request Water Board Staff (Staff) define the water quality and the potential uses throughout the Delta.

Water Board Staff Response: The fishing beneficial use is currently happening in the form of sport fishing. There are not definitions that define existing or potential.

U.S. EPA Response: U.S. EPA clarified this in their April 2008 comment letter on the February 2008 version of the BPA and requested that the Regional Board clarify why COMM is not being considered as an existing use. U.S. EPA believes that water can be impaired and still be an existing use.

Stakeholder Response: It appears that the State Water Board has a very different definition of existing and potential use than the U.S. EPA. Request that Regional Water Board legal staff work with the State Water Board and U.S. EPA to resolve this issue (see **Action Item List**).

Stakeholder Comment: Is commercial an existing use in the current BPA?

Water Board Staff Response: It had not been designated for the entire Delta; has been designated by water body.

Row 2: *Revise Chapter III (Water Quality Objectives), under “Methylmercury”, to add as follows:*

The following fish tissue objectives apply to the Sacramento-San Joaquin Delta and Yolo Bypass waterways listed in Appendix 43. The average methylmercury concentrations shall not exceed 0.08 and 0.24 mg methylmercury/kg, wet weight, in muscle tissue of trophic level 3 and 4 fish, respectively (150 500 mm total length). The average methylmercury concentrations shall not exceed 0.03 mg methylmercury/kg, wet weight, in whole fish less than 50 mm in length.

Stakeholder Comment: The BPA should include appendix 43; and if referencing another document the BPA should include said document as an appendix, or imbed a hyperlink to take the reader to the document online (see **Action Item List**).

Row 3: *A long-term goal is to have a fish tissue objective protective of humans eating four to five meals per week of top trophic level fish. The current objectives protect people eating one meal/week (32 g/day) of Delta fish plus some non-Delta (commercial market) fish. The fish tissue objectives will be reevaluated during the Phase 1 Delta Mercury Control Program Review and later program reviews to determine whether the higher consumption rate can be attained as methylmercury reduction actions are developed and implemented.*

Stakeholder Comment: Recommend flipping paragraph 2 and 3; will send example text to Regional Board Staff (see **Action Item List**). Support having a fish tissue objective that is more conservative. The immediate objective is to have the 32 grams per day goal.

Stakeholder Response: Not comfortable with the 32 grams per day proposal.

Stakeholder Response: The 32 grams per day is a more aggressive consumption rate than what is typically used. To go more conservative would result in a more protective rate than is used in other parts of the County.

Stakeholder Response: Would be reasonable to start with a lower number and then re-evaluate during Phase 2.

CCP Response: Staff will settle this issue and make the final recommendation.

Stakeholder Response: What is considered a reasonable allocation may be different for different sources.

Water Board Staff Response: Right now all the various discharge sources will receive allocations. All allocations must be met to reach goals. The Water Board does not know who is going to be able to meet their allocations yet. This is the point of the Phase 1 studies. At the end of Phase 1, Staff will be able to go back and rebalance the numbers. Some areas of the Central and West Delta do not need reductions. The Water Board will evaluate if this issue should be addressed in the MOI (**see Action Item List**).

Stakeholder Comment: From a practical standpoint, there is a real difference between putting a number that is not feasible and one that is. There needs to be reasonable levels.

Stakeholder Comment: The idea is to have objectives, and how a discharger achieves the objectives is connected to the load allocations. The Water Board should wait until after the Phase 1 studies have been completed before setting different numbers for the different groups.

CCP Comment: Recognize that the term reasonable is and will likely always be fuzzy. Are Stakeholders okay with some dischargers meeting their allocations while some do not?

Stakeholder Response: Need the Phase 1 studies to determine what can reasonably be done. Hope that all Stakeholders work together to get the biggest bang for the buck.

U.S. EPA Response: This TMDL is set up with across the board percentages. If after the control studies the State can show that one stakeholder can reduce more than another the State can adjust the allocations. Allocations do not have to be the same percentage across the board.

Water Board Staff Response: An earlier version of the TMDL included .06, stating to evaluate what it takes to meet .06 (**see Action Item List**).

Row 6: This control program was adopted by the Regional Water Quality Control Board on [date], approved by the Office of Administrative Law on [date], [Effective Date], and approved the U.S. Environmental Protection Agency on [date].

Mr. Morris announced that he had created a spread sheet identifying the Phase 1 milestones and offered to share it with the Stakeholder Group. Mark List, DWR, suggested putting the spread sheet into MS Project format (**see Action Item List**).

U.S. EPA Comment: When the Office of Administrative Law (OAL) approves the BPA, it goes into effect for State purposes. U.S. EPA approval is required for the BPA to go into effect for Clean Water Act (CWA) purposes. With respect to waste load allocations and permit limits, the Regional Water Board has to adopt consistent waste load allocations into a permit before a discharger can be in non-compliance.

CCP Response: There seems to be some confusion regarding what can occur between those two approval processes. The Water Board should consult legal council (**see Action Item List**).

Stakeholder Comment: Want to make sure the discussion includes not just NPDES permit issues but the issues of the entire Stakeholder Group.

Row 8: Phase 1 spans from [Effective Date] to [8 years after the Effective Date]. Phase 1 emphasizes studies and pilot projects to develop and evaluate management practices to control methylmercury. Phase 1 includes pollution minimization programs for inorganic (total) mercury sources in the Delta and Yolo Bypass, as well as requirements for reducing total mercury loads from the upstream watersheds, to reduce sediment-bound mercury in the Delta and Yolo Bypass that may become methylated in wetland and open-water habitats, and to reduce total mercury loading to San Francisco Bay, as required by Resolution R2-2006-0052.

Stakeholder Comment: Need to add agriculture in the list with wetlands and open-water. Would like reductions or higher priorities for agricultural areas where reductions are feasible. Some of the new studies show the ratio between different types of rice. The Water Board should look at this issue more aggressively during Phase 1.

Stakeholder Comment: There is confusion as to what total mercury and MeHg reduction has to happen when. This needs to be clear so dischargers understand what they have to do.

Stakeholder Comment: The research information will help focus dischargers as they move forward in Phase 1.

Stakeholder Response: Agree with the need to be more aggressive and clear. We can not wait for Phase 2.

Stakeholder Comment: Do not think any Stakeholder should be treated any differently than another.

CCP Comment: How does the Water Board mandate or create incentives in Phase 1 for dischargers to move forward beyond studies if it is believed that remedial actions may be beneficial (based on previous studies). Using the word “should” does not require dischargers to do something; the word “shall” would require action (**see Action Item List**).

Stakeholder Comment: If you have what would be considered reasonable / feasible best management practices would they be put into permits?

Water Board Staff Response: Yes, with the exception of the Cache Creek Settling Basin, this is becoming more like a study. The Water Board will continue recommending that this be a “should”. We would like to hear what an incentive should be from the Stakeholder Group (**see Action Item List**).

Stakeholder Response: Key is not to provide disincentives to dischargers; but rather to look at incentives, perhaps through offsets.

Mr. Ceppos asked each Stakeholder to review the BPA, and identify which paragraphs they felt were most important to cover during the afternoon. The following numbers / issues were identified.

34, 49 (wetland issues), 42 (funding), 8,9,10 (projects coming on line now), Compliance Dates, Yolo Basin Improvement Plan and Schedule, 30, 78-81 (State and Federal Allocations, 89, 40,53,55,56,61,78,81,87,94,97,98,102,118,119,31,39,48,54

Stakeholder Comment: Would like to see the Guiding Principles document that was prepared by the Principles Workgroup put in the BPA as an attachment.

Water Board Staff Response: Water Board Staff will look into whether the Guiding Principles can be attached to the BPA as an appendix.

Mr. Morris then walked the Stakeholder Group through the Phase 1 milestones and deadlines.

Stakeholder Comment: Funding is not guaranteed, a State-level budget change proposal process is an 18-24 month process before any money is received.

Row 17: Compliance Date

Methylmercury load and waste load allocations for dischargers in the Delta and Yolo Bypass shall be met as soon as possible, but no later than 2030, unless the Regional Water Board modifies the implementation schedule and final compliance date.

Stakeholder Comment: A single compliance date may not be the most rational approach.

Stakeholder Comment: Would like Phase 2 to span 15 years rather than 10, thereby giving dischargers enough time to design, build and implement.

U.S. EPA Response: Compliance schedule authority says dischargers have to comply as soon as possible; but the date will be different for each facility. There is not a 10 year maximum.

Stakeholder Comment: The Stakeholder Group ought to continue with the 2025 deadline; doing so would hold discharger's feet to the fire.

Staff will evaluate what latitude they have to shift compliance dates (**see Action Item List**).

Stakeholder Comment: How does the specific time schedule for submitting the plan apply to the City of Sacramento?

Row 18: Nonpoint source dischargers are not required to begin implementation of methylmercury management practices developed in Phase 1 until the Regional Water Board has completed the Delta Mercury Control Program Review and has developed the tributary mercury control programs. However, nonpoint source dischargers should implement reasonable and feasible methylmercury management practices as they are developed.

Staff will reevaluate the use of the words “shall” and “should” throughout the BPA and will consider if the MOI can include some “shall” language (see **Action Item List**).

Row 34: *In subareas needing reductions in methylmercury, proponents of new wetland and wetland restoration projects scheduled for construction after [Effective Date] shall (a) participate in Control Studies as described below, or shall implement site-specific study plans, that evaluate practices to minimize methylmercury discharges, and (b) implement methylmercury controls as feasible. Wetland projects may include pilot projects and monitoring to evaluate management practices that minimize methylmercury discharges.*

Stakeholder Comment: Concerned that there is not enough coordination during Phase 1. We need to recognize that control studies may include pilot projects to reduce MeHg production and discharge. How is the Water Board ensuring that all the different studies and Stakeholder efforts will be working together?

Stakeholder Comment: This BPA language needs to establish a research protocol. Currently non-point source (NPS) dischargers have to sample for fish, birds etc. that are not actually present in some habitats. Need coordination between different State agencies.

Water Board Staff Response: The Water Board 404/401 Staff are currently trying to coordinate with agencies on this issue. It is not possible to force coordinated studies. Staff will work with NPS dischargers to review the 401 implementation program and determine which text should be included in the MOI (see **Action Item List**).

Stakeholder Comment: Water Board permits need to be coordinated with this TMDL.

Stakeholder Comment: There should be an exemption for small wetland projects.

Stakeholder Response: Opposed to exemptions. This is an area of non consensus and is non-negotiable as far as we’re concerned..

Pamela Creedon, Water Board Executive Officer Response: This whole issue is concerning. There is a push for habitat restoration in the Delta. Actions to restore habitat for one endangered species may harm others with the creation of MeHg. The Water Board does not want to create another environmental hazard in the Delta as we attempt to improve it.

Stakeholder Comment: Wetland creation and enhancement are required for both mitigation and improvement purposes. The Water Board needs to get the U.S. Army Corp of Engineers involved. Agencies are not doing wetland restoration simply because they want to.

Stakeholder Comment: This Stakeholder Group has an internet data repository; maybe there is some way to tie the study requirements and outcomes to the document repository.

Stakeholder Comment: Naturally functioning wetlands produce MeHg in nature; therefore, to benefit wildlife, agencies should not manage wetlands differently than the natural system.

Stakeholder Comment: How would the Phase 1 schedule fit into existing plans being developed by the City of Sacramento?

Water Board Staff Response: The Water Board is making an attempt to be consistent with City of Sacramento's plans. Some permits were written before the TMDL was in place so they had placeholder text inserted explaining the need to do additional work. The control schedule still applies to the City of Sacramento, but could be as simple as a letter that discloses what the City of Sacramento anticipates doing.

Stakeholder Comment: Main interest is the Cache Creek Settling Basin; and whether mitigation for the Sacramento River floodplain would be required.

Stakeholder Comment: If the Water Board is exempting flood flows why is the Stakeholder Group discussing flood plains?

Water Board Staff Response: Allocations were determined by looking at net MeHg production. Studies are showing that dry upland areas are really good at producing MeHg. There is not a flood plain allocation assigned to the Yolo Bypass.

Staff did not identify a responsible entity for open water. The Yolo Bypass floods for approximately 30 days every other year. In order to develop an allocation, Staff will review recent CALFED studies. The U.S. EPA would not approve the Delta MeHg TMDL with out this allocation included. Appendix C of the BPA discusses how to mitigate flood plains.

CCP Response: The EO is expected to meet soon with Joe Grindstaff, of CALFED. This meeting will include the directors of DWR, Department of Fish and Game, State Lands Commission, U.S. Fish and Wildlife Service, and the U.S. EPA. The meeting will address how the allocation responsibilities are going to be dealt with.

Water Board Staff Response: What the allocation looks like will determine what the studies look like during Phase 1. Staff will need to consider all the different sources.

Stakeholder Comment: The issues this Stakeholder Group are trying to address can not be tackled without considering high level policy decisions. The safest route for the Water Board to take would be to not tell other agencies what to do unless they are receiving a permit. If the Regional Water Board wants a non-permit receiving agency to do something they should do so with an MOI.

Water Board Staff Response: The Porter-Cologne Water Quality Control Act gives the Regional Water Board the authority to regulate other agencies.

Stakeholder Comment: Look at where Yolo Bypass is referenced in the Yolo Bypass Improvement Plan and Schedule; this area could be treated as a unique feature in the BPA, there are several plans/studies that focus on this area.

Stakeholder Comment: DWR is planning on spending a large amount of money on MeHg reduction; currently proceeding with several projects in the Cache Creek Settling Basin.

CCP Response: Commenter should coordinate with Staff regarding future projects in the Cache Creek Settling Basin (see **Action Item List**).

Stakeholder Comment: The 2013 compliance date is not reasonable. Concerned that many of the proposed control studies will take a long time; and result in conflicting data. Would like the Water Board to tell the Stakeholder Group what will happen when the control studies are inconclusive.

Water Board Staff Response: If Stakeholders show a good faith effort when undertaking the control studies, the Water Board will give them more time if need be. There is value in doing an inconclusive control study because it tells us what cannot be done. Requests that commenter review BPA row 60 and 66 (see **Action Item List**).

Next Steps

- Regional Water Board Staff requested that all Stakeholders submit their comments on the September 2nd version of the BPA by close of business on September 22nd.
- CCP committed to sending out the action items from the September 17th Stakeholder meeting by mid day on September 23rd.
- Regional Water Board Staff and CCP will schedule the next NPS Work Group meeting
- Regional Water Board Staff and CCP will continue to form the Environmental Justice Caucus.

Adjourn

September 17 Delta MeHg TMDL Stakeholder Group Meeting Attendees

Alex Naughton	Shaw E&I
Andria Ventura	Clean Water Action
Bob Schneider	Tuleyome
Carolyn Yale	U.S. Environmental Protection Agency
Cathy Roache	U.S. Army Corp of Engineers
Christal Love	Center For Collaborative Policy
Dave Ceppos	Center For Collaborative Policy
Debbie Webster	CVCWA
Diane Fleck	U.S. Environmental Protection Agency
Eugene Mullenmeister	Shaw E&I
Eric Milsten	California State Lands Commission
Fred Lee	G. Fred Lee & Associates
Greg Giannonatti	City of Roseville
Greg Yarris	Cal Waterfowl Association
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
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
Pamela Creedon	Central Valley Regional Water Quality Control Board
Patrick Morris	Central Valley Regional Water Quality Control Board
Paul Buttner	California Rice Commission
Rudy Rosen	Ducks Unlimited
Sally Liu	The Nature Conservancy
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
Tony Pirondini	City of Vacaville
Victor Chan	Solano County