



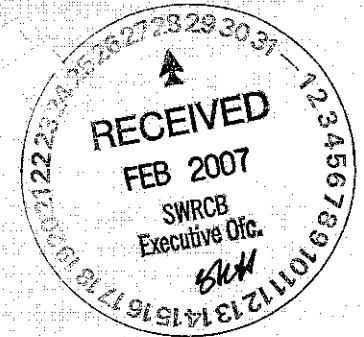
Hg OBJECTIVES
Deadline: 2/28/07 5pm

DAVID H. WILLIAMS
DIRECTOR OF WASTEWATER

February 28, 2007

Via Electronic and U.S. Mail

Tam Doduc, Chair and Members
c/o Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Dear Chairwoman Doduc and Members:

RE: Comments on CEQA Scoping for Proposed Methylmercury Water Quality Objectives for Inland Surface Waters, Enclosed Bays, and Estuaries in California

The East Bay Municipal Utility District (EBMUD) is pleased to have the opportunity to provide comments regarding CEQA scoping for the proposed methylmercury objectives for inland surface waters, enclosed bays, and estuaries in California. EBMUD is a large regional municipality that provides potable water and wastewater services for over 1.3 million and 650,000 customers of the East Bay, respectively. EBMUD prides itself as a steward of San Francisco Bay, exemplified by over 80 months of continued NPDES compliance at our main wastewater treatment facility.

Do not disrupt the San Francisco Bay TMDL and Watershed Permit.

As you know, there has been almost a decade-long effort to develop a TMDL and associated watershed permit for the San Francisco Bay that appears to be nearing completion. EBMUD feels it is critical that this effort to develop a state methylmercury objective, while certainly important, not disrupt the final adoption and implementation of the Bay mercury TMDL. EBMUD believes that good governance calls for maintaining this TMDL effort, in recognition of: 1) the millions of dollars that have been expended over the last several years to develop the foundational technical information that supports the TMDL, 2) the extensive process that has been followed in developing the TMDL, including dozens of stakeholder meetings through the Clean Estuary Partnership as well as many regulatory workshops and hearings, and 3) the fact that whether a total or methylmercury water quality objective is used as the compliance standard would not change the critical underlying technical information that was used in the development of the TMDL and the associated allocation of mass loadings.

Unfortunately society has left a legacy of mercury contamination in the Bay due to historical mining practices over the past two centuries and it is understood that it will take decades to clean up this abandoned mine legacy and the associated mercury laden sediment in the Bay. The result is that the waste load allocations and the pollution

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prevention and cleanup activities required of the discharges in the TMDL and draft watershed permit are irrespective of whether total or methylmercury led to the high concentrations of mercury in fish tissue.

San Francisco Bay is unique since it served as the "sink" for mercury utilized in mining operations. The need to implement the TMDL and get the Bay on the road to recovery is urgent and should not be delayed by the development of a new mercury objective. Approaches to deal with the dilemma of developing a statewide methylmercury objective while maintaining this parallel effort to complete the San Francisco Bay TMDL can be managed in a number of ways. One reasonable approach would be to exclude the San Francisco Bay from this new statewide methylmercury objective development process. Instead, the proposed (and EPA approved) WQOs for mercury that were approved by the Region 2 Water Board in August 2006 could apply as the objective for the Bay. Under this approach when the State Water Board considers the adoption of the San Francisco Bay site-specific mercury WQOs and the San Francisco Bay Mercury TMDL, which we hope will occur in the Spring of 2007, that it be made clear that the San Francisco Bay site specific WQOs will not be replaced by any statewide standards if and when they may be adopted.

If the State Water Board does not recognize the Region 2 standard approved in August 2006 for San Francisco Bay, it will be necessary for the CEQA process to undertake an analysis of how the statewide proposed standard when adopted would be implemented specifically for the San Francisco Bay and how this implementation would be consistent with the San Francisco Bay Mercury TMDL. This does not seem like a desirable use of limited state resources.

Perhaps a better alternative would be to accomplish both, the rapid completion, adoption and implementation of the SF Bay TMDL and associated watershed permit and the statewide methylmercury objective which could then be incorporated at some later point through the long-term adaptive management process identified in the SF Bay TMDL.

EBMUD Supports a Statewide Mercury Reduction Strategy

EBMUD strongly supports the concept raised by a number of stakeholders during verbal testimony that the current scope of simply adopting statewide WQOs is too narrow to meet the meaningful goal we all share of reducing fish tissue mercury concentration to levels acceptable for human health and wildlife consumption in all waters of the state. However, challenges with mercury in our water environment are not the result of current or future point source discharges. By establishing WQOs for mercury there appears to be an expectation that this effort by itself will result in making meaningful progress towards achieving improvements in the aquatic environment and other beneficial uses. It is EBMUD's belief that a comprehensive CEQA analysis would show that these, or any WQOs, cannot be achieved solely through the State Implementation Plan, which is to say by further effluent restrictions on point sources. For this reason, EBMUD urges the State

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Water Board to lead the development of a broad multi-media (i.e. air, land, water) approach to reducing mercury in our environment.

CEQA Analysis Must Detail Reasonable and Foreseeable Means of Compliance with a Water Column Based Approach

It appears that a number of the WQO alternatives under consideration are water column based objectives, which may pose significant compliance problems for POTWs throughout the State, and will not provide better beneficial use protection than a fish tissue objective upon which the mercury TMDL is based. While fish tissue directly measures the precise nature of the impairment, a water column approach requires numerous assumptions for translating the mercury concentration in the water column to a fish tissue concentration. This translation process, by definition, results in inaccuracies (and conservatism) that may result in:

- 1) Wide spread POTW non-compliance which may lead to the need for additional treatment – the CEQA analysis should analyze the cost and benefits associated with this non-compliance and
- 2) Non-attainment of the Water Quality Standards in many waters which would lead to 303(d) listings – the CEQA analysis should review how the WQO will be achieved including the potential implementation strategies for TMDLs.

Thank you for allowing EBMUD to comment on this statewide initiative. EBMUD looks forward to continue to work with the Water Board as this process moves forward.

Sincerely,



David R. Williams
Director of Wastewater

cc: Tom Howard
Acting Executive Officer, SWRCB