



Clean Water Summit Partners
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Summit Partners:
- Bay Area Clean Water Agencies (BACWA)
- California Association of Sanitation Agencies (CASA)
- Central Valley Clean Water Association (CVCWA)
- California Water Environment Association (CWEA)
- Southern California Alliance of Publicly Owned Treatment Works (SCAP)

January 25, 2017

Chair Felicia Marcus & Members
State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Transmitted via e-mail

Re: Request to Bifurcate Mercury Objectives and Tribal/Subsistence Beneficial Use Development and Extension of Time to Comment on Mercury Objectives

Dear Chair Marcus and Members of the Board:

The Clean Water Summit Partners are writing in response to the proposed *Draft Staff Report, Including Substitute Environmental Documentation for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions* (Draft Beneficial Uses and Mercury Objectives) dated January 4, 2017. We respectfully request the State Water Board “bifurcate” the two proposed actions, moving forward in the near term on the mercury objectives for protection of aquatic life and wildlife piece mandated by the Consent Decree, and moving more deliberately on the proposed beneficial uses for tribal and subsistence fishing component (and any objective attendant thereto).

The Clean Water Summit Partners are the California state and regional wastewater associations committed to working together on issues of critical importance to our collective memberships. Our membership includes the California Association of Sanitation Agencies (CASA), Bay Area Clean Water Agencies (BACWA), Central Valley Clean Water Association (CVCWA), California Water Environment Association (CWEA), and Southern California Alliance of POTWs (SCAP). All members of this coalition have a keen interest in the Draft Beneficial Uses and Mercury Objectives process and are concerned about the direction being proposed.

At the outset, the Clean Water Summit Partners recognize the importance of protecting the use of state waters for tribal-cultural practices and for subsistence fishing. We also acknowledge the importance of establishing mercury water quality objectives to protect aquatic life and wildlife, and the State Water Board’s desire to move quickly in that effort to comply with judicially imposed obligations in the matter of *Our Children’s Earth Foundation v. U.S. Environmental Protection Agency* (Case No. 3:13-cv-2857-JSW). However, the proposed action here goes far beyond the adoption of mercury objectives for aquatic life and aquatic-dependent wildlife, which is the scope of the Consent Decree related to mercury.

The Summit partners believe these two separate regulatory actions (mercury objectives per the consent decree and additional mercury objectives and beneficial use development) can and should be separated for further development and consideration. Bifurcating these two distinct regulatory actions would enable the State Water Board to achieve the adoption deadline for the mercury objectives to protect aquatic life and wildlife without the additional complexity and controversy surrounding the beneficial uses proposal. Moreover, it would also provide the Water Board an opportunity to develop clear implementation guidance for Regional Boards when determining appropriate permit limits to protect the newly proposed beneficial uses (i.e., T-CUL, T-SUB and SUB). s.

As currently proposed, the Draft Beneficial Uses and Mercury Objectives will have substantial economic and environmental impacts throughout the state unless the two items are separated. For example, moving forward with the beneficial uses proposal would very likely upset a large number of carefully developed TMDLs in the Delta and San Francisco Bay regions, undoing a significant amount of work already undertaken as well as creating uncertainty in many areas of the state. In addition, the proposed beneficial uses for tribal subsistence and general subsistence fishing could apply to many other contaminants (such as selenium, PCBs, pesticides, and dioxins/furans) aside from mercury. It is our understanding that little, if any, environmental and economic analyses have been performed on these other contaminants, and tying beneficial use adoption directly with the mercury objective process gives a false impression that the sole impact of the beneficial uses would be related to mercury management, which is simply inaccurate.

Third, and perhaps most importantly, the current proposals related to designation of tribal and subsistence beneficial uses do not contain adequate guidance to the Regional Boards, the discharger community, or the public at large as to how to develop numeric effluent limits to achieve narrative water quality objectives if those uses are adopted. This creates far too much uncertainty in implementation, and such guidance is a necessary component of any tribal and subsistence fishing beneficial use adoption by the State Water Board.

In summary, we believe there are a number of significant issues related to the beneficial use designations that must be resolved before the State Water Board considers adoption of that proposal. The consensus of multiple reviewers that are experienced in the implementation of TMDLs and basin plan provisions, including mercury control programs, is that there are too many technical and administrative issues in the proposed provisions to allow uniform or successful implementation. It simply makes no sense to fast-track the adoption of these other elements of the current proposal when proceeding more deliberately on the beneficial use development is likely to render a far better outcome which could be supported by stakeholders. The Clean Water Summit Partners stand ready to participate in a stakeholder working group to provide input in developing implementation guidance for the beneficial uses, as well as the remaining mercury water quality objectives. We also believe that a robust stakeholder process could result in development of beneficial uses implementation guidance that could accompany a final proposal for the State Board to consider.

In consideration of the above, we respectfully reiterate our request that the State Water Board separate the proposals currently contained in the Draft Beneficial Uses and Mercury Objectives, so that the development of mercury objectives to protect aquatic life and wildlife can still move forward, while providing additional time to have robust stakeholder engagement on the other proposed beneficial use designations (and attendant objectives).

In addition to the request to separate these two processes, the Clean Water Summit Partners join numerous other stakeholders in requesting an extension of time to comment and additional steps to the public process for this rulemaking. According to the Notice of Opportunity for Public Comment, Staff Workshop, Public Hearing and Notice of Filing, written comments are due to be submitted by noon on February 17, 2017. We request 60 additional days to on or about April 17, 2017, and postponement of the State Water Board's first hearing on this issue until May 2017. We ask for this extension irrespective of whether the State Water Board decides to bifurcate the two processes, as stakeholders would still need additional time just to review and comment on the mercury objectives for protection of aquatic life and wildlife component.

If an extension is granted, there should be additional opportunity for the submission of written public comments on any revisions, followed by a final hearing for consideration of adoption in September 2017. We believe this short extension can be accommodated under the terms of the Consent Decree, in that the State Water Board can work with the U.S. EPA to obtain an automatic extension of the Consent Decree.

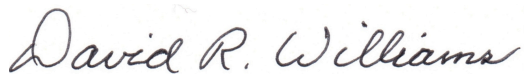
Chair Felicia Marcus and Board Members

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Thank you for your consideration, and if you have any follow up questions or concerns, please contact Adam Link at (916) 446-0388 or alink@casaweb.org.

Sincerely,



David Williams
BACWA Executive Director



Roberta L. Larson
CASA Executive Director



Debbie Webster
CVCWA Executive Director



Elizabeth Allan
CWEA Executive Director



Steve Jepsen
SCAP Executive Director

cc: Felicia Marcus
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