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DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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February 16, 2017

IN REPLY PLEASE

REFER TO FILE: **WM-11**

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

BENEFICIAL USES AND MERCURY OBJECTIVES COMMENT LETTER

The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide comments on the proposed Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions. Enclosed are our comments for your review and consideration.

If you have any questions, please contact me at (626) 458-4300 or ageorge@dpw.lacounty.gov or your staff may contact Mr. Paul Alva at (626) 458-4325 or palva@dpw.lacounty.gov.

Very truly yours,

MARK PESTRELLA
Acting Director of Public Works

A handwritten signature in cursive script that reads "Angela R. George".

ANGELA R. GEORGE
Assistant Deputy Director
Watershed Management Division

GA:ba

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Enc.

cc: County Counsel (Lillian Salinger)

THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT COMMENTS ON THE PROPOSED TRIBAL AND SUBSISTENCE FISHING BENEFICIAL USES AND MERCURY PROVISIONS

I. The Development of Beneficial Uses Should be fully analyzed prior to the Development of Mercury Water Quality Objectives

The draft proposal includes the development of three new beneficial uses definitions and five new mercury water quality objectives that would apply statewide. While both of these efforts are important, they should be considered in separate proceedings. First, the new beneficial uses would impact other pollutants beyond mercury, including bacteria and other bioaccumulative pollutants. Thus, once these new beneficial uses are designated, their protection could require the development of new water quality objectives or revision of existing objectives for multiple other pollutants, which could result in new 303(d) listings of waterbodies and the development of associated Total Maximum Daily Loads (TMDLs). Second, these new beneficial uses may require minimum instream flows and, thus, potentially interfere with water rights as well as impact the ability to implement and manage stormwater “capture and infiltrate” practices to augment water supplies. The draft proposal does not recognize the full range of these other potential impacts of the proposed new beneficial uses. Interested parties should be given the opportunity to address these other impacts without limitation. Lumping these beneficial uses with mercury provisions inadvertently implies that only mercury objectives are at issue and takes away the analysis of other issues.

The County of Los Angeles (County) and the Los Angeles County Flood Control District (LACFCD) recommend that these two efforts be decoupled to allow their potential impacts to be fully analyzed. We suggest adopting the beneficial uses first, followed thereafter by the mercury water quality objectives.

II. Guidance Should be Provided to Facilitate the Proper Designation of the New Beneficial Uses to Waterbodies

The County and the LACFCD understand that the newly defined beneficial uses (Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing) would not automatically apply to any particular waterbody until designations have been made. We also understand that the designation of the beneficial uses to waterbodies will be done by the Regional Boards through the

basin planning process. However, the procedure as to how these designations would be conducted is unclear. Additional guidance is needed in this regard.

During the early 1990s when the Basin Plans were first established, most of the beneficial uses therein were designated without proper scientific assessment. This has created tremendous challenges in implementing the water quality standards, because many of those beneficial uses were not properly designated and have proved to be unattainable. A good example is the designation of recreational uses in concrete-lined flood control channels.

Therefore, in order to facilitate the proper designation of the new beneficial uses as well as to maintain consistency statewide, the State Water Board should provide guidance to this effect. In particular, the guidance should require conducting a use attainability analysis in support of any such designations.

III. The Attainability of the Newly Proposed Mercury Water Quality Objectives Should be Analyzed

The newly proposed mercury water quality objectives are orders of magnitude more stringent than the current existing objectives. For example, for fish tissue, the existing mercury numeric objective is 0.3 mg/kg¹ while the newly proposed objective is as low as 0.03 mg/kg, especially for areas known to be habitat for the California Least Tern. Similarly for water column, the existing mercury objective is 50 ng/L² while the newly proposed objective is as low as 1 ng/L. These newly proposed objectives are too stringent and in many cases are lower than the mercury levels found in the natural environment, which is estimated to be in the order of 10-20 ng/L. As a result, there are serious concerns among the regulated community as to the attainability of these objectives. For example, as pointed out by the wastewater community during the State Water Board hearing on February 7, 2017, even the use of highly advanced and very expensive technologies, such as tertiary treatment systems, would not meet these objectives. This challenge is more pronounced for stormwater discharges, where high-tech treatments are not economically or practically feasible.

The County and the LACFCD recommend that the State Water Board assesses the attainability of the proposed mercury objectives and associated potential economic impacts. Water quality objectives should not be set below naturally

¹ 2001 U.S. EPA criterion for the protection of human health; 1999 OEHHA guideline

² California Toxics Rule human health criterion for consumption of organisms

occurring levels. This analysis should then also guide the application of any new objectives by the Regional Boards.

IV. The Proposed Effluent Limitations for Wastewater and Industrial Discharges Should Not Apply to Municipal Stormwater Discharges

While the primary goal of the mercury objectives is to establish fish tissue objectives, we also note that the fish tissue objectives were translated into water column objectives for use as effluent limitations in permits. As presented in Table 1 of Appendix-A (regulatory language) of the Staff Report, the translated water column objectives vary from 1 ng/L to 12 ng/L, depending on the type of water body and the beneficial use being protected. We understand that these water column-based numeric effluent limitations are meant to apply only to wastewater and industrial discharges, and not to municipal stormwater discharges.

However, in the past, Regional Boards misapplied numeric water quality objectives developed for wastewater or drinking water discharges to stormwater discharges. This was often the case during the development of TMDL waste load allocations or effluent limitations for municipal stormwater discharges. Unlike wastewater and industrial discharges, the use of traditional treatment systems is not feasible for municipal stormwater discharges, making these standards, if applied to stormwater, unattainable.

Therefore, to avoid misapplication of the proposed effluent limitations in Table 1 of Appendix A, the County and the LACFCD recommend that clarifying language be added to indicate that these effluent limitations are not applicable to municipal stormwater discharges.

V. The Implementation Program Should Focus on the Major Sources of Mercury, and Not on De Minimus Sources such as Stormwater

The primary sources of mercury in the environment include natural sources (e.g., volcanic activities, weathering of rocks, forest fires), mining activities, and emissions from industrial activities (e.g., coal-fired plants, waste combustion, cement production). Many of these sources are beyond the control of local dischargers. Further, unlike other pollutants, mercury sources are primarily global in nature, i.e., much of mercury in a given watershed often comes from sources outside of the watershed. In this regard, atmospheric transport and deposition is known to play a significant role. Available literature estimates that atmospheric deposition accounts for more than 50 percent of mercury in the environment.

These sources are generally uncontrollable at a local level and demand a statewide action.

Other sources of mercury such as municipal stormwater discharges are de minimus. To this end, efforts that focus on these negligible sources would not likely improve mercury concentrations in waterbodies or fish tissue. Therefore, if meaningful mercury reduction is to be attained, the focus should be on major sources, such as mining activities and global anthropogenic emissions.

VI. The Impact of the Proposed Provisions on Existing TMDLs Should be Recognized and Documented

According to the draft Staff Report and staff presentation during the February 7, 2017 State Water Board workshop, the proposed provisions do not affect existing mercury TMDLs. This is not necessarily true, because there is nothing that prevents the Regional Boards from re-opening existing TMDLs and applying the new standards and requirements to those TMDLs.

Therefore, the State Water Board is underestimating the potential impact of these provisions on existing TMDLs. These impacts should be recognized and analyzed and fully documented.

VII. The State Water Board Should Allow Additional Opportunity for Public Comment

The draft Staff Report consists of 700+ pages of highly technical material that requires significant amount of time to review. Currently, only 30 days of public review period is provided, which is not sufficient to fully understand this material and provide input. Further, the State Water Board's schedule for adoption in June 2017 makes the process too expedited given the number of issues that need to be addressed and the significant impact of the proposed provisions. It is very important that sufficient time be given for the public to review and provide comment as well as for the State Water Board staff to fully address public concerns.

Accordingly, the County and the LACFCD request the following: (a) consider adoption of the beneficial uses separately from adoption of the mercury water quality objectives; (b) extend the current comment deadline by two months, from February 17, 2017 to April 17, 2017, (c) extend the Board adoption date from June to Fall 2017, and (d) provide additional opportunity for public comment and stakeholder meetings during summer 2017.