

**Office of the Deputy Chief Operating Officer**  
Infrastructure/Public Works



February 17, 2017

VIA EMAIL TO: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

**Subject:** Comment on Proposed Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions

Dear Ms. Townsend:

The City of San Diego (City) appreciates the opportunity to provide comments on the proposed provisions for Draft 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 Draft Staff Report (the Provisions). The City supports water quality objectives that protect humans and wildlife consuming locally caught fish, although it is the City's understanding that objectives that protect such beneficial uses have long been the law in California. For decades, the City has actively participated in the regulatory process to update water quality standards (beneficial uses and water quality objectives) and associated policies on the basis of the latest scientific research and available data.

The City agrees with the State Board that the Municipal Separate Storm Sewer System are a de minimis source of mercury and the Draft Staff Report should focus on the largest sources of mercury to the receiving waters, such as implementing programs to reduce aerial deposition of mercury or mine runoff. However, the City is concerned the Draft Staff Report and the Provisions as written could, perhaps inadvertently, make it impossible for water agencies, wastewater agencies and Municipal Separate Storm Sewer Systems to meet the new water quality objectives, significantly increasing the cost for storm water program implementation and monitoring, exposing the City to Clean Water Act citizen suits, and potentially adversely impacting the exercise of the City's water rights and ability to manage water resources as the owner and operator of nine man-made drinking source water reservoirs that store a portion of the City's water supply.

The proposed beneficial uses, Water quality objectives and related Staff Report will impact two City departments, the Public Utilities Department (SDPUD) and the Transportation & Storm Water Department. Our main comments are outlined in two separate sections in the body of this letter, and more detailed comments and recommendations from the Transportation and Storm Water Department are provided in the attached table.

City of San Diego, Public Utilities Department comments:

The SDPUD serves as both a water and wastewater agency, and both functions are potentially impacted by the Provisions proposed in the Staff Report. The SDPUD takes its water quality role very seriously. Implementation of the Provisions contained in the Staff Report will be very costly for our ratepayers while offering little public benefit in the way of improved water quality or better wildlife protection. In some cases the requirements are not even technologically feasible at this time. The Public Utilities Department offers the following comments as to how the proposal and Staff Report may be modified and clarified in order to streamline implementation and allow for more effective solutions that have less potential for unintended adverse consequences on the City's water and wastewater management operations.

**1. The proposal should be bifurcated to allow separate proceedings for (1) the adoption of the three new beneficial uses, and (2) the new water quality objectives meant to protect wildlife.**

Although both the beneficial uses and the water quality objectives pertain to water quality goals, the water quality objectives primarily pertain to wildlife health, whereas the proposed beneficial uses primarily relate to human health and cultural practices. These two initiatives are distinct, with separate procedural processes and practical impacts applying to each. Only the water quality objectives tied to wildlife protection are directly related to the US Environmental Protection Agency (US EPA) consent decree, so if the issues are split there would be more time available for consideration and evaluation of the three proposed beneficial uses. Given the depth of information contained in the Staff Report on both of these initiatives and the potentially significant impact these proposals may have on the City as both a water and wastewater agency, separation of the two regulatory efforts is urged. Stakeholders and the public have not been provided with sufficient time and opportunity to engage with the Board and staff regarding the Provisions and substantial uncertainty remains on the scope of the two programs, and the types of measures (and associated costs and environmental impacts) that will be needed to implement each. As outlined in the Staff Report, the Board's outreach on the Provisions was limited to (1) an initial scoping meeting back in February of 2007, (2) a limited number of "targeted outreach" and "focused outreach" meetings that were conducted in 2014 and 2016 primarily focused on reservoirs, and (3) the six-week public review and comment period in early 2017.<sup>1</sup> *The City strongly supports other stakeholders' existing requests that the Board bifurcate its consideration of these two items to allow for more thorough public involvement in consideration of the Provisions.*

**2. The Staff Report should be amended to provide detailed guidance regarding the Regional Boards' process for designating water bodies with the new beneficial uses, and should establish objective criteria for the use designations.**

The proposed new beneficial uses are based on similar uses that have already been adopted by the North Coast Regional Board. It would be very helpful to the stakeholder community to have access to the procedural record—including testimony and any other evidence provided—upon which the North Coast Regional Board based its decisions to adopt the beneficial uses within its jurisdiction, as well as the evidence relied upon when the uses were designated to demonstrate that tribal/cultural and subsistence uses were existing in the local water bodies, and any related water quality objectives that were adopted to protect those new uses. The Staff report does not contain any details about the beneficial use adoption process,

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<sup>1</sup> Staff Report, pages 16-18.

instead deferring to each Regional Board's individual determination of the approach and standards it prefers.

This is problematic for the owners and operators of water supply reservoirs that currently allow fishing. Indeed, the proposed beneficial uses may serve as a catalyst for owners/operators of reservoirs to immediately and permanently curtail fishing of any kind, which it would be within their rights to do in many cases. Indeed, under the current vague explanation of the proposed beneficial uses in the Staff Report, any reservoir that ever supported subsistence fishing or tribal cultural practices (even if occurring decades before, and prior to the construction of the reservoir) could theoretically be designated by a Regional Board based upon little or no evidence of an actual existing use. This is particularly troubling in arid Southern California where, unlike the North Coast, subsistence fishing would likely have been impossible in most watersheds in the absence of a dam that creates a year round water resource capable of supporting permanent fish habitat. Given that "[t]here is no requirement or threshold of use that the Water Boards must consider when determining beneficial use designations and no specific requirement for the protection of such uses under the Clean Water Act,"<sup>2</sup> as explained later herein, there is the very real risk of wholly inconsistent and potentially harmful designations by Regional Boards that imperil water agencies' future ability to utilize their reservoirs for their primary critical purpose—the provision of a safe and reliable drinking water supply.

The State Board should use these written comments, and additional information obtained by reservoir owners, to adopt parameters to standardize this process, thereby facilitating understanding, participation and engagement of the regulated water supply agencies. Given the significant impacts these designations may have on both water and wastewater agencies throughout the state, *the City urges the State Board to amend its Staff Report to include information regarding the procedure and evidence relied upon by the North Coast Regional Board in adopting its related beneficial uses and water quality objectives, and also to develop protocols that are made available for public comment prior to Board approval that can guide the process of beneficial use designation at both the State and Regional Board levels.*

**3. The Staff Report should clearly identify the various procedural pathways by which the five new water quality objectives will be applied to specific water bodies.**

In both the Staff Report as well as at public workshops on the Provisions, Water Board staff claimed that adoption of the new beneficial uses as well as the affiliated water quality objectives would occur through the basin plan amendment process, a public proceeding with opportunity for stakeholder involvement. The process has been explained to include first a regional water board's designation of the relevant beneficial use or uses at a particular water body, then follow with the appropriate water quality objectives. However, the language of the staff report seems to imply that the Water quality objectives could be applied absent their affiliated beneficial uses, saying "[t]hese objectives would generally only apply where the corresponding uses are designated." *The City requests that the Board clearly outline the procedural pathways it or the Regional Boards may use to adopt the new water quality objectives as well as the beneficial uses, and which objectives, if any, would be mandatory as a result of the Board's approval of the Provisions.*

The Staff Report suggests that the new water quality objects SUB and T-SUB may be inserted into NPDES permits by Regional Boards outside of the public basin planning process.

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<sup>2</sup> Staff Report, page 111.

The Staff Report states that the proposed beneficial uses (and assumedly by extension their related water quality objectives) will not be designated to particular water bodies unless through the standard basin plan amendment process at the regional board level.<sup>3</sup> However, page 11 contains the following language:

“[t]he Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objectives would only apply to a particular water body after the corresponding beneficial use is designated to a water body. *However, either of the objectives may be incorporated into a permit prior to formal designation if the Water Boards determine that tribal subsistence fishing or subsistence fishing is an existing use.*” (Emphasis added.)

This language is inconsistent with the assurance that beneficial uses and water quality objectives would be adopted in a standardized and transparent public process allowing for stakeholder involvement. Additionally, it skips two regulatory steps required under federal law (designation of a beneficial use, and designation of the objectives necessary to protect that beneficial use). Moreover, it is entirely unclear from the Staff Report how the Boards will determine what ‘existing uses’ of the water body are. *The City requests clarification regarding the State and Regional Water Quality Control Boards’ authority to include any of the proposed new water quality objectives in NPDES permits outside of the standard basin plan amendment procedure, as well as more information regarding the process for determining the ‘existing uses’ of water bodies. Further, the City asks the Board to provide additional assurances in the Provisions that a transparent public vetting process will be required and fully utilized as the Provisions are implemented at the Regional Board level.*

**4. What is an Existing Use? The designation of reservoirs with any of the new beneficial uses should not be based on practices that (1) predate the reservoir itself, or (2) are inconsistent with the water body’s owner or operator’s rules and regulations regarding the use of the water body.**

According to the Staff Report, “[d]esignated uses answer the policy question of “what do we want to use this water body for?” as well as for recognizing present or existing uses.”<sup>4</sup> Unfortunately, grafting such aspirational policy goals onto water bodies whose operation is currently governed by extensive water rights law, and complex operational parameters associated with timed releases and deliveries, could create conflict, confusion, and costs for water and wastewater agency ratepayers. California Water Code Section 13241 requires the Water Boards to consider a number of factors when establishing water quality objectives, including past, present and probable future beneficial uses of water. Moreover, U.S. EPA regulations under the Clean Water Act require that existing uses are “those uses actually attained in the water body on or after November 29, 1975, whether or not they are included in the water quality standards (40 C.F.R. §131.3(e)).”<sup>5</sup>

It is unclear how the existing uses standard prescribed by federal law will intersect with the process of designating California water bodies with the three new proposed beneficial uses and related water quality objectives, none of which are required by federal law. The Staff Report needs to clarify what is, and what is not, an existing use for purposes of designating one of the three proposed beneficial uses, and this guidance is particularly needed in the

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<sup>3</sup> Staff Report, page 11.

<sup>4</sup> Staff Report, page 111.

<sup>5</sup> Staff Report, page 22, 79.

context of when, if ever, a reservoir could be deemed to meet the criteria for an “existing” use. In particular, a question is raised as to whether any prior use of a water body that has since been impounded, to create a reservoir would qualify and ‘transfer’ as either a ‘past’ or ‘existing’ use of the current impoundment and reservoir.<sup>6</sup> The City currently owns nine (9) reservoirs that are utilized for water supply purposes, seven of which are impoundments of rivers or streams. Although all nine of the City’s reservoirs were created prior to November 29, 1975, it is unclear whether the Board would accept evidence of any use prior to that date of the later-impounded river or stream as a ‘past use’ of the current reservoir that could then be affirmatively recognized and protected through formal designation with one or more of the three new proposed beneficial uses. State law similarly requires a detailed analysis of a potential beneficial use before such uses and supporting water quality objectives may be designated. Porter Cologne requires Regional Boards to evaluate “water quality conditions that could reasonably be achieved through coordinated control of all factors which affect water quality in the area” (Wat. Code §13241(c)). The Staff Report makes no effort to require Regional Boards to demonstrate that a proposed use and associated objectives could reasonably be achieved prior to designation.

Moreover, Section 10 of the Staff Report does not clearly outline how past, present or even probable future beneficial uses are identified, saying “[t]here is no specific threshold for determining when a use is an existing or when a use is a past use.”<sup>7</sup> In the case of probable future beneficial uses, it is unclear how a use that has not yet occurred could be relied upon to adopt a current water quality objective to implement it. The City is concerned that the beneficial use designation process may be relied upon to try to establish a use right or practice that a water body’s owner and operator does not currently allow, creating costs and limitations on the use of City reservoirs for the water supply purposes for which they were constructed. *The City requests additional guidance in the Staff Report regarding how past practices—or speculative future ones—will be relied upon to support the designation process for both beneficial uses and water quality objectives. The City also urges the State Board to adopt—through a public process allowing for meaningful stakeholder engagement—a threshold for determining when a use is a past or existing use. The City further urges the Board to also consider clarifying that reservoirs owned and controlled by a water agency should not be considered eligible for listing under any of the three new beneficial absent a clear showing by the Regional Board that: (1) the proposed use actually and currently exists at the reservoir site; (2) the public (or tribes) have a legal right for that use to continue at the reservoir site independent of any action that might be taken by a State or Regional Board.*

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<sup>6</sup> A Regional Board’s designation of any reservoir with one or more of the three proposed beneficial uses could lead to bizarre results not likely contemplated by the Provisions. For example, if a reservoir was designated a tribal/cultural beneficial use based upon tribal rituals that took place in a rapidly flowing river that may have existed prior to construction of a dam, could the reservoir owner be directed by a Regional Board (via cease and desist order) to remove the dam, or to make substantial releases from the dam, so that uses that existed prior to dam construction could resume. Such a scenario would have the potential to wipe out other beneficial uses such as MUN and AGR, and deprive arid regions of the state of critical water supply, and arguably “taking” potentially billions of dollars of water rights that could no longer. Absurd results would also occur if the Subsistence beneficial use was designated. Could a municipal reservoir owner be mandated by a Regional Board to continue allowing fishing at a reservoir even where such fishing interferes with reservoir operations? Could a reservoir that currently contains no edible fish nevertheless be designated for a Subsistence beneficial use because, if stocked, it could theoretically provide subsistence fishing opportunities for future tribal and non-tribal fishers?

<sup>7</sup> Staff Report, page 112.

Finally, the City agrees with the Association of California Water Agencies (Clean Water Act) recommended approach for designating new beneficial uses. Specifically, in order to provide consistent application of the Mercury Provisions and the designation of beneficial uses throughout the State and to avoid misapplication of the implementation program, the City recommends the Board include in the Staff Report guidance for the Regional Boards as follows:

- a. State that with respect to the tribal (T-SUB, CUL) and subsistence (SUB) beneficial uses and Water quality objectives flow and fish quantity criteria/objectives shall not be established.
- b. State that the designation of tribal (T-SUB, CUL) and subsistence (SUB) beneficial is prohibited where the use is wholly in the past (i.e., not existing and not probable future use).
- c. State that the designation of tribal (T-SUB, CUL) and subsistence (SUB) beneficial uses are prohibited where the current water quality does not support the use.

**5. The proposed effluent limits for the T-SUB beneficial use (which may also be used for water bodies designated with SUB<sup>8</sup>) are extremely low, require costly technology to implement and may not yield measurable reductions in fish-tissue mercury.**

As the Staff Report indicates, “wastewater treatment plants are generally a relatively minor source of mercury to the environment compared to other sources.”<sup>9</sup> In the San Diego region we know of no case where a permitted discharge has affected mercury concentrations in an inland water body. However, the Provisions would impose extremely low effluent limitations for mercury that will lead to significant compliance costs being passed on to ratepayers. The Staff Report recognizes this, saying “[w]here the background mercury level is high, it may not be reasonable to require smaller contributors of mercury to reduce their mercury discharge to levels below background.”<sup>10</sup> *The City opposes the imposition of strict effluent limitations on dischargers that will not yield meaningful reductions in mercury bioaccumulation in fish tissue or in a reservoir’s water column.*

**6. The Provisions can be read to require local water and wastewater agencies to implement costly mercury minimization programs to clean up environmental mercury pollution for which they are not responsible, and which could lead to less water entering reservoirs that rely on the addition of such water.**

The Staff Report outlines that the bulk of mercury pollution in the state’s water bodies is the result of mining deposits and runoff as well as atmospheric deposition from sources that are primarily located out of state. As a result, the Publicly Owned Treatment Works effluent limitations contained in the implementation plan will likely do little to mitigate total mercury in the water column and by extension the bioaccumulation in fish tissue, since these effluent discharges are relatively minor sources of mercury. This issue is raised in Chapter 6.13 of the Staff Report, wherein mercury minimization programs are outlined as an implementation option. The Report states that the extent of such programs are “proportional to the facility discharge flow, the potential impact, and the discharger’s available resources,”<sup>11</sup> meaning that for sizable agencies and dischargers, the scope of such a

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<sup>8</sup> Staff Report, page 246.

<sup>9</sup> Staff Report, page 153.

<sup>10</sup> Staff Report, page 154.

<sup>11</sup> Staff Report, page 163.

plan could be quite broad. The report goes on to identify various functions that could be included in such a plan, including: identification of sources and methods of reducing mercury, BMPs/limitations of all potential sources, and material recovery. The Report also suggests alternatives to such plans that could include activities that reduce mercury in the watershed (such as mine cleanups) as well as the initiation and funding of residential liquid mercury collection programs. According to the Staff Report:

“A mercury minimization program could be conducted by a wastewater treatment facility...For a wastewater treatment facility, sources could include dental offices (from the dental amalgam), hospitals, schools, or industrial dischargers...Once mercury sources are identified, the facility would conduct actions to reduce the mercury from these sources. Also, a wastewater treatment facility may conduct actions to generally try to reduce mercury inputs such as public education on proper disposal of products containing mercury or selecting products without mercury.”<sup>12</sup>

The City agrees that source control is a crucial element of pollution mitigation, but is concerned that if these elements are included in the implementation plan that water and wastewater agencies may be required to undertake extensive new actions and costs to clean up and remediate both background environmental mercury as well as other mercury sources for which they are not responsible. Implementation of these actions would be costly and likely ineffective given the evidence that much of the mercury loading in Southern California is the result of air deposition of mercury, often from overseas. As the Staff Report itself acknowledges, “the effectiveness of mercury minimization plans is debatable.”<sup>13</sup> *The City therefore opposes efforts to require dischargers (or non-dischargers) to remediate legacy mercury for which the discharger is not responsible or to undertake responsibility for reducing mercury from sources outside of its system such as dental offices, hospitals, schools or industrial dischargers.*

**7. Designation of beneficial uses at a water body created and used for storage could limit the use of water for supply purposes (if effluent limits or mercury/pollutant mitigation requirements are not implemented). As a result, the Water quality objectives established pursuant to B.U. designations could adversely impact the exercise of water rights at a given water body/reservoir.**

The Staff Report repeatedly states that these new beneficial uses are being proposed pursuant to the State Board’s water quality authority under the state Porter-Cologne and federal Clean Water Act, and therefore are not related to appropriative water rights<sup>14</sup>. However, if a given water body is designated with one of the new beneficial uses, and related Water quality objectives are imposed that contain effluent limitations, fish tissue limits, minimum flow requirements, or fish quantity mandates, then City is concerned this could lead to a scenario wherein the use of water supplies from that water body may be curtailed until compliance with a mercury objective the City has no meaningful ability to meet at a reservoir site occurs. For example, the Staff Report states that “[t]he State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use.”<sup>15</sup> Enforcement of flow objectives can have real impacts on the use of water for supply purposes. *The Staff Report should clarify the practical nexus—outlining potential direct and indirect impacts—between the Board’s exercise of its water quality jurisdiction and the exercise*

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<sup>12</sup> Staff Report, page 169.

<sup>13</sup> Staff Report, page 165.

<sup>14</sup> Staff Report, page 104, 108.

<sup>15</sup> Staff Report, page 110.

*of valid consumptive water rights at any state water body designated with one of the new beneficial uses and related water quality objectives.* Additionally, the Staff Report should make clear to the Regional Boards that additions to, or releases from, reservoirs or other impoundments pursuant to the exercise of valid water rights should not be deemed “discharges” so as to trigger a requirement for compliance with the new water quality objectives. Moreover, the Staff Report should clarify that all of the new beneficial uses and objectives should be implemented in such a manner as to provide the least amount of interference with the exercise of existing water rights and operation of a municipal drinking water program.

**8. It is unclear how the Provisions interact with AB 52 (Gatto, 2014) and tribal resource consultation under CEQA.**

AB 52 established a consultation process with tribes regarding ‘tribal cultural resources.’ Under the statute, a tribal cultural resource can be defined as follows:

“A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American Tribe.”<sup>16</sup>

Section 5024.1 of the Public Resources Code contains a list of criteria, any one of which if met means the resource in question is a ‘tribal cultural resource’ that requires CEQA consultation. It is unclear whether beneficial uses under the California Water Code, Porter-Cologne Act—if designated to water bodies based on evidence of past or existing uses—could constitute a ‘tribal cultural resource’ under CEQA, which could lead to lengthy and costly consultation requirements if these resources are impacted by projects subject to CEQA. *The City requests clarification as to the impact of the State Board’s adoption of the proposed beneficial uses (CUL and T-SUB, specifically), or the Regional Board’s designation of the new uses and related water quality objectives to specific water bodies on the AB 52 CEQA tribal consultation requirement.*

**9. The Staff Report should clarify that its requirements do not apply to open ocean discharges or outfalls.**

The City operates two ocean outfalls where its treated effluent is discharged to the open ocean. Although these discharges require NPDES permits, they are not discharges to an inland surface water, enclosed bay or estuary. As a result they would not be subject to the requirements contained in or resulting from the Provisions.

**City of San Diego, Transportation & Storm Water Department Overarching Comments:**

- The Draft Staff Report does not adequately consider the California Water Code 13241 factors as they relate to attainability of the water quality objectives and economic impacts of the water quality objectives.
- The statement of necessity for the newly proposed beneficial uses fails to provide data and information to support the necessity for the proposed beneficial uses.
- The Draft Staff Report fails to include any limitations on the types of water quality objectives that would apply to the newly proposed beneficial uses. Additionally, there are no limitations to application of the newly proposed beneficial uses, which could impact water rights, flows, and many other factors.

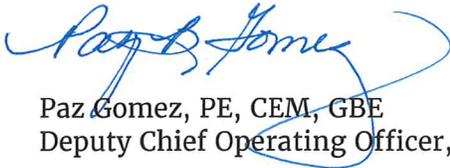
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<sup>16</sup> California Public Resources Code §21074

- The Draft Staff Report fails to provide direction to Regional Boards with respect to how the newly proposed beneficial uses should be applied. The adoption of the proposed beneficial uses, with the associated water quality objectives, will impact areas where there are existing TMDLs and WLAs.
- The State Water Resources Control Board should work with the USEPA to modify the process and timeline for the adoption of the proposed beneficial uses and water quality objectives (decouple the process).
- Please see attached table for further detailed comments.

The City hopes to continue its partnership/collaboration with the State Board and dedication to further the scientific basis of water quality regulations. Thank you for your time and consideration of these comments. If you have questions, please contact Carolyn Ginno (Public Utilities Department) at (858) 654-4286 or at [cginno@sandiego.gov](mailto:cginno@sandiego.gov), or Ruth Kolb (Transportation & Storm Water Department) at (858) 541-4328 or at [rkolb@sandiego.gov](mailto:rkolb@sandiego.gov).

Sincerely,



Paz Gomez, PE, CEM, GBE  
Deputy Chief Operating Officer, Infrastructure/Public Works

PG/rk

Attachment

cc: Alejandra Gavaldón, Director of Federal Government Affairs & Water Policy, Office of the Mayor  
Kris McFadden, Director, Transportation & Storm Water Department  
Halla Razak, Director, Public Utilities Department  
Christine Leone, Deputy City Attorney, City Attorney's Office  
Ray Palmucci, Deputy City Attorney, City Attorney's Office  
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Drew Kleis, Deputy Director, Transportation & Storm Water Department  
Cathleen Pieroni, External Water Policy Program Manager, Public Utilities Department  
Ruth Kolb, Program Manager, Transportation & Storm Water Department  
Jeffery Pasek, Watershed Manager, Public Utilities Department

**Attachment 1: City of San Diego Comment Table – Mercury Provisions**  
February 17, 2017

Comment #	Section Page	Topic	Comments and Recommendations
1	NA	General	<b>Recommendation:</b> The State Water Resources Control Board should work with the USEPA to modify the process and timeline for the adoption of the proposed beneficial uses and water quality objectives (decouple the process).
2	2.3.2 Pages 6-8	Water quality objectives	A narrative objective for mercury for the newly proposed Subsistence Fishing Beneficial Use is highly subjective and does not appear to be based on actual human health exposure rates.
3	2.3.2 Pages 7-8 5.5 K.6.6 Page 449	Least Tern Prey Fish Water Quality Objective and Approach to determine Water Quality Objective	There is little to no data to support the proposed Least Tern Prey Fish water quality objective (0.03 mg/kg in fish less than 50mm) that is less than the current “prey fish” (0.05 mg/kg in fish 50-150 mm) objective as stated on page 449.
4	2.3.2 Pages 7-8 5.5 Page 84 K.12 Page 467	Least Tern Prey Fish Water Quality Objective and Considerations for Monitoring and Assessment	<b>Recommendation:</b> Due to the lack of data to justify the proposed Least Tern Prey Fish water quality objective, we recommend retaining the current prey fish objective.  The City strongly supports monitoring at the six prioritized sites where 74% of the Least Tern breeding pairs were recorded as described in Section K-12 rather than implementing these requirements at all locations listed in Table K-5.
5	2.3.3 2.3.4 Pages 8-12	Implementation	The Draft Staff Report should recognize the timeframe in which the proposed water quality objectives are anticipated to be achieved.  <b>Recommendation:</b> The implementation plan should be phased, with the primary efforts focused on the largest sources of mercury to the receiving waters.

**Attachment 1: City of San Diego Comment Table – Mercury Provisions**  
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Comment #	Section Page	Topic	Comments and Recommendations
6	6.1.3 Options, Options 2 and 3 Pages 90-91,	Numeric Fish Tissue Objective, and Numeric Water Column Objectives	<p>The proposed water column targets are well below concentrations that are attainable in surface waters. The City of San Diego (City) is concerned that without proper clarification, implementation of this policy will result in all flowing surface waters in the State being declared impaired due to mercury. The City recommends consistency with the State's Policy for Implementation of Toxics Standards for Inland Surface Waters Appropriate; clarifying language can be found in footnote 1 on page 3 of the SIP: "The SIP Policy does not apply to regulation of storm water discharges."</p> <p><b>Recommendation:</b> Clarify in Appendix I, Calculation of the Water Column Targets that development of numeric water column targets do not apply to storm water discharges.</p>
7	7.2.3 Dredging Activities Pages 70-71	Mercury monitoring and dredging activities	<p>The City is concerned that requiring a dredging project to avoid creating exceedances of 12 ng/L in receiving waters would be prohibitive and require control measures that are not practicable in many instances.</p> <p><b>Recommendation:</b> Clarify language about the intended use of water column targets for dredging activities.</p>
8	Section 7.2.5 Page 173-174	Current conditions for NPDES storm water dischargers	<p>Municipal Separate Storm Sewer System (MS4) facilities are not responsible for mercury deposited from atmospheric emissions and should not be burdened with monitoring to substantiate this fact.</p> <p><b>Recommendation:</b> Add the following clarifying language to section 7.2.5 (Reasonable and Foreseeable Means of Compliance for Municipal Storm Water), "MS4s are not responsible for mercury deposited from atmospheric emissions."</p>

**Attachment 1: City of San Diego Comment Table – Mercury Provisions**  
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Comment #	Section Page	Topic	Comments and Recommendations
9	6.11.3 Option 5 Page 140  7.2.5 Page 171	MS4s	<p>The City agrees that most of the necessary actions related to mercury controls are already under way through existing requirements in municipal NPDES permits for urban storm water discharges. The City has planned Low Impact Development projects in their Water Quality Improvement Plans that can help to reduce transport of mercury by reducing runoff and sediment transport. The Draft Staff Report includes conflicting statements regarding requirements for MS4s under Issue K, Option 5 as opposed to Section 7.2.</p> <p><b>Recommendation:</b> Make the language under Issue K, option 5 consistent with the language found under Section 7.2.5; suggested language is provided below:  <i>“For Phase I MS4s Activities, there would be little to no change. The requirements for MS4 dischargers in the Provisions are already required by permits for most MS4s, but not explicitly for mercury control or prevention. Therefore, it is anticipated that the reasonably foreseeable methods of compliance are likely already being done by Phase I MS4s.”</i></p>