

Bill George – *President*
Division 3

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Alan Day – *Director*
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George A. Wheelton – *Director*
Division 4
Public Comment
Statewide Mercury Policy-CEQA Scoping
Deadline: 03/30/12 by 12:00 PM

Jim Abercrombie
General Manager

Thomas D. Cumpston
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In Reply Refer To: ECL0312-372

March 30, 2012

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



SUBJECT: Comment Letter – Statewide Mercury Policy – CEQA Scoping Comments

Dear Ms. Townsend:

The El Dorado Irrigation District (EID) appreciates this opportunity to provide California Environmental Quality Act (CEQA) scoping comments on the proposed Statewide Mercury Policy and Mercury Control Program for Reservoirs (Policy). EID holds some of the oldest water rights claims in the State of California dating back to 1856 and portions of these rights are stored in reservoirs within the uppermost portions of the South Fork American River watershed. In addition to these upstream supplies, approximately one-third of EID's water supplies are withdrawn from Folsom Reservoir through Warren Act Contracts or Central Valley Project Water Service Contracts with U.S. Bureau of Reclamation and, therefore EID has a vested interest in the potential effects to Folsom Reservoir operations as a result of the proposed Policy. EID has closely followed and participated in two previous mercury Total Maximum Daily Load (TMDL) control program efforts that were initiated, but not completed, for lower portions of the American River watershed over the past several years by the Central Valley Regional Water Quality Control Board.

No EID facilities are among the 74 reservoirs currently listed as Section 303(d) Clean Water Act impaired water bodies for mercury and EID has no reason to believe that any future additions to the list will include EID facilities. However, since the proposed Policy would apply to all current and future listed reservoirs, including Folsom Reservoir, EID provides the following scoping comments.

- I. The SWRCB must consider all potentially significant adverse environmental impacts of the proposed Policy.

The SWRCB must, in the SED, consider any potentially significant adverse environmental impacts of the proposed Policy (Cal. Code Regs. tit. 23, §3777(b)(2)), especially those to public services and utility and service systems (Appendix G CEQA Guidelines).

In particular, the SWRCB should consider all potentially significant adverse impacts, including economic impacts, to reservoir operations. These potentially significant adverse environmental impacts cannot be ignored in the SED.

As required by CEQA and the SWRCB regulations for implementing CEQA, the SWRCB must consider the economic impacts of the proposed Policy (Cal. Code Regs. tit. 14, §15021(b), tit. 23, §3777(c)). Further, if the proposed Policy will result in one or more unmitigable potentially significant effects, SWRCB must balance, among others, the economic benefits including region-wide or statewide environmental benefits of the proposed Policy against its impacts. One component of the proposed Policy as described in the public scoping meeting documentation and discussed at the scoping meeting is “modification of water storage and discharge patterns”. EID, like many water purveyors with hydroelectric generation capacity rely heavily on income from hydroelectric generation sales to meet its financial obligations to remain fiscally sound. Thus, “modification of water storage and discharge patterns” could significantly impair the financial stability of purveyors like EID. When analyzing the environmental effects of the proposed Policy, the SWRCB must consider the economic effects of the proposed Policy and include such findings in its approval that are supported by substantial evidence in the administrative record (Cal. Code Regs., tit. 23, §3777(c) and (d)).

SWRCB must also consider other competing mandates it has previously placed upon reservoir operators including, but not limited to, minimum releases downstream of dams to maintain instream flows, reservoir lake level requirements for recreational and aesthetic purposes, and pulse flow requirements. Such actions severely restrict or eliminate operational flexibility and by their very nature are designed to affect water quality in and downstream of reservoirs.

II. The SWRCB should expand its alternatives analysis.

The SWRCB must provide an analysis of reasonable alternatives that would avoid or reduce potentially significant adverse environmental impacts of the proposed Policy (Cal. Code Regs., tit. 14, §15126 et seq., tit. 23, §3777(b)(3)). In its public scoping notice, the SWRCB has not proposed to analyze any feasible alternatives to the proposed Policy other than the no action alternative. The SWRCB should consider an alternative that achieves the time and efficiency SWRCB desires by combining similar waterbodies as defined by elevation, size, hydrology, watershed, ownership, operational pattern, operational regulatory constraints, and/or other similar factor into a single TMDL. Multiple Regional Water Quality Control Board’s (RWQCBs) within the state have completed or are developing TMDL processes for mercury using such factors and, therefore SWRCB can and should propose such logic and efficiency measures in an alternative to be analyzed in the SED. In contrast, the narrowly defined and restrictive current proposed action of a proposed statewide Policy would unduly impose significant regulatory burden and operational restrictions on California’s water and power supplies without demonstrating the feasibility of how such paradigm changes in California’s utility operations would demonstrably reduce methylated mercury levels in California’s waters. The RWQCBs have demonstrated such efforts are feasible, timely, and efficient and, therefore the SWRCB needs to follow the example set by the RWQCBs.

In the scoping materials, SWRCB states the no action alternative would continue current the practice of implementing waterbody-specific TMDLs. While EID understands developing 74 reservoir specific TMDLs would present a significant workload burden to SWRCB resources, SWRCB must consider an alternative that would not unjustly impose unnecessary operational restrictions and regulatory burdens on California's water and power supplies such as the alternative described above. A lack of staffing resources is not just cause for imposing a statewide Policy without consideration of a multitude of factors that substantially affect the feasibility of implementing the methods of compliance that would be developed. SWRCB efforts to meet Clean Water Act TMDL timeline requirements with the U.S. EPA in a timely and efficient manner need to consider the substantial effect to reservoir owners who provide a critical portion of current and future water and power supplies for our state.

In developing the SED, SWRCB is required to conduct an environmental analysis of the reasonably foreseeable methods of compliance including identification of the methods, analysis of any reasonably foreseeable adverse environmental impacts associated with those methods, analysis of alternatives that would have less such impacts, and analysis of mitigation measures to minimize any unavoidable significant adverse environmental impacts of those methods (Cal. Code Regs., tit. 23, §3777(b)(4)). The SWRCB should expand its alternatives analysis to consider other reasonable methods of compliance.

III. The SWRCB must demonstrate feasibility of compliance methods.

In developing the proposed Policy, all proposed actions including the methods of compliance must be supported by substantial evidence in the administrative record (Cal. Code Regs., tit. 23, §3777(a)). EID acknowledges the dearth of specific data related to each of the 74 reservoirs currently listed as impaired for mercury and the ability of SWRCB to utilize numerical ranges when analyzing method of compliance identified by the proposed Policy (Id. at §3777(c)). However, CEQA prohibits speculation or conjecture. Broad application of implementing actions and responsible parties for these actions without consideration of specific factors such as competing federal, state, and/or local regulations, land or water rights ownership, or perhaps most importantly the contribution of reservoir operation toward the overall accumulation and methylation of inorganic mercury constitutes speculation and conjecture. SWRCB must demonstrate the proposed potentially drastic changes in reservoir management are feasible as reasonable foreseeable methods of compliance (Cal. Code Regs., tit. 23, §3777(b)(4)(A)). By the SWRCB's own admissions in the CEQA scoping fact sheet, more information and studies are needed to determine if fish tissue mercury levels could be reduced by this compliance method.

Additionally, EID acknowledges and expresses its concern now that the SWRCB CEQA regulations do not require a site-specific project level analysis of the method of compliance. Rather, the responsibility is deferred to those parties responsible for implementing the proposed Policy when they determine the manner in which they will comply, which in this case would be the reservoir operators without land or air quality management responsibility surrounding their reservoirs (Cal. Code Regs., tit. 23, §3777(c)). Such deferral of analysis would force the

reservoir operator to demonstrate reservoir reoperation is not feasible when in actuality SWRCB should never have found such method for compliance feasible during its CEQA review based upon the multiple factors cited in this CEQA scoping comment letter. Undoubtedly many other reservoir operators throughout the state of California that either are affected or could be affected in the future by the proposed Policy are also raising such faults and limitations of such a drastic proposal to modify statewide water supply and hydroelectric power generation reliability. This must be addressed in the SED.

CEQA requires that the agencies balance competing public objectives and not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment (Cal. Code Regs., tit. 14, §15021). If SWRCB ultimately decides to approve the proposed Policy despite these effects, the SWRCB must specifically identify that expected benefits from the proposed Policy outweigh reducing or avoiding the significant environmental impacts through implementation of alternatives and such statements must be supported by substantial evidence in the record. (*Id.* at §15091(b) and §15093(b), tit. 23, §3777(d)). In doing so, SWRCB must carefully consider the statewide effects to water and power supplies associated with the proposed Policy.

EID appreciates the opportunity to comment on the proposed Policy and looks forward to working with the State Board on this issue. If you have questions or would like additional information concerning EID's comments, please contact me at (530)642-4082.

Sincerely,



Daniel Corcoran
Environmental Manager

DC:ls

cc w/o enclosures:

El Dorado Irrigation District:
Jim Abercrombie, General Manager
Tom Cumpston, General Counsel
Brian Poulsen, Deputy General Counsel
Brian Mueller, P.E. Director of Engineering