



March 30, 2012

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

Re: “**Comment Letter - Statewide Mercury Policy – CEQA Scoping Comments.**”

Dear Ms. Townsend:

I am writing on behalf of the California Indian Environmental Alliance (CIEA) to provide comments regarding the Statewide Mercury Policy for reservoirs and lakes.

CIEA distributes fish consumption advisories in Central and Northern California and we have participated in the stakeholder process of several Mercury or Methylmercury TMDLs. Our activities and previous comments centered on outreach to California Tribes to and integration of the comments they expressed. The following comments also address this need:

**1) CIEA strongly recommends the State Water Resource Control Board (SWRCB) immediately take steps to initiate direct government-to-government Consultation with California Native American tribal governments and subsequently maintain ongoing communication and collaboration with Tribes during the creation of this Statewide Mercury Policy and during all stages of implementation.**

- Note that any communication or participation by CIEA in the creation of the Statewide Mercury Policy does not satisfy the requirement of Consultation or that of outreach and communication with tribes. Tribes each speak on their own behalf.
- Therefore, outreach to begin Consultation with Tribes should begin immediately in all regions of the State and should attempt such activities with all Tribes whether federally recognized or un-federally recognized. This is paramount so that Consultation can be completed early enough for Tribal comments to be included in decisions made as a result of the CEQA scoping process.
- In all cases of communication with Tribes, outreach must be made early enough for tribal councilmembers and tribal environmental offices to all review related materials, commit and prepare staff, seek funding for participation, and as necessary, obtain legal

consultation.

- Note tribal Consultation is required under presidential Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” and it is the responsibility of agencies receiving federal funds to adhere to principles of consultation.<sup>1</sup> Additionally, California’s SB 18 is applicable in the creation of this Policy; it was created to preserve and protect cultural places of California Native Americans and is unique as it requires local governments to involve California Native Americans in early stages of land use planning, well before individual site-specific, project-level decisions are made by a local government. It extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes.<sup>2</sup>
- We further extend this recommendation for Consultation to include Tribes in all advisory, decision-making, and review groups created in relation to this Statewide Mercury Policy.

**2) Secondly, CIEA recommends that the SWRCB re-evaluate the Policy timeline and mechanisms which are expected to incorporate the current and traditional fish consumption rates of Tribes into this Policy**

- We are encouraged that Tribal uses and subsistence fishing was included in topics to be considered in the CEQA Scoping meeting presentations. We however, strongly suggest that the SWRCB work with tribes to develop mutually acceptable timelines and mechanisms to incorporate fish consumption studies.
- CIEA is concerned that the Tribal Fish Consumption Study to be completed by UC Davis has had numerous administrative delays and that the results could now be compiled too late to advise the first reiteration of the Statewide Mercury Policy.
- Additionally the UC Davis Tribal Fish Consumption Study should not take the place of direct Tribal Consultation and outreach efforts, which should be completed by the SWRCB directly, allowing proper time for Tribes to seek funding ,develop internal processes and to complete the necessary research to provide this information for the development of the Policy
- As part of the Statewide Mercury Policy design of mechanisms for updates by Tribes will be paramount and again, should be guided by tribes themselves. This is in recognition of the diversity of the Tribes within California and further recognizes each tribe only has the authority to speak for their own fish consumption rates and their own additional beneficial uses. Each tribe also has differing resources available to them and differing areas of urgent focus affecting their ability to provide the data requested.
- Lastly, multiple approaches may be necessary to include information from all Tribes.

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<sup>1</sup> <http://www.epa.gov/fedreg/eo/eo13175.htm>

<sup>2</sup> <http://www.waterplan.water.ca.gov/docs/cwpu2005/vol4/vol4-tribal-tribalconsultationguidelines.pdf> and [http://www.csac.counties.org/images/public/Advocacy/hlt/Tribal%20Consult%20Guidelines\\_03-01-05.pdf](http://www.csac.counties.org/images/public/Advocacy/hlt/Tribal%20Consult%20Guidelines_03-01-05.pdf)

**3) CIEA recommends the CVRWB follows the lead of the North Coast Regional Water Board and include The Native American Cultural (CUL) use and Subsistence Fishing (FISH) use in this Policy.**

- We recommend these designations over the COMM recreational fishing designation suggested by Staff. Inclusion of the CUL and FISH designations would identify the traditional and cultural uses of waters within the Region and protect tribal communities as well as non-native communities that utilize reservoirs and lakes for subsistence fishing.
- The Beneficial Use designation of *Native American Culture (CUL)* identifies waters that “*support the cultural and/or traditional rights of indigenous people such as subsistence fishing and shellfish gathering, basket weaving and jewelry material collection, navigation to traditional ceremonial locations, and ceremonial uses.*” The *Subsistence Fishing (FISH)* Uses of water identifies waters that “*support subsistence fishing.*”<sup>3</sup>

Thank you for this opportunity to comment. I look forward to the process before us and am hopeful the SWRCB will meaningfully engage with tribes by initiating Consultation in all regions of California very soon.

Please contact me if you have any additional questions.

Sincerely,  
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Executive Director  
California Indian Environmental Alliance  
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[www.cieaweb.org](http://www.cieaweb.org)

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<sup>3</sup> [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/basin\\_plan/083105-bp/03\\_bu.pdf](http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/03_bu.pdf)