

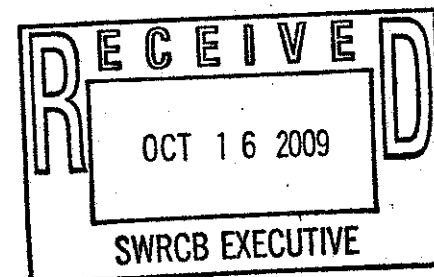


October 16, 2009

State Water Resources Control Board  
Attn: Jeanine Townsend, Clerk of the Board  
1001 I Street  
Sacramento, CA 95814

Subject: Comment Letter – Guadalupe River Watershed Mercury TMDLs

Dear Ms. Townsend:



The Santa Clara Valley Water District (District) appreciates the opportunity to provide comments concerning the Guadalupe River Watershed Mercury Total Maximum Daily Load (TMDL) amendment to the Water Quality Control Plan for the San Francisco Bay Region. The District is generally in support of pursuing a planning effort of this magnitude, and has to-date contributed significant resources (over \$10 million) to both the development of the TMDL and conduct of early implementation activities aimed at reducing mercury impacts in the watershed. However, our collaborative and voluntary efforts have largely been unrewarded by the San Francisco Bay Regional Water Quality Control Board (Regional Board).

The District is a wholesale water supplier, flood protection, and stream stewardship agency for Santa Clara County. The mission of the District is a healthy, safe and enhanced quality of living in Santa Clara County through watershed stewardship and comprehensive management of water resources in a practical, cost-effective and environmentally sensitive manner. The District does not own lands where mining occurred. However, the District owns three reservoirs and extensive creek properties that have been impacted by the largely unabated discharge of mercury from upstream mining areas. The District collaborated with the Regional Board (starting December, 1999) by voluntarily financing (\$1 million) the studies that support the TMDL; has voluntarily initiated applied studies (starting in 2005) in two reservoirs and one lake to reduce methyl mercury production (\$4 million); and has conducted several mercury removal/stream restoration projects (starting in 2003) that have removed 1000 kg of mercury from the lower watershed and has eliminated the only remaining source of mine waste discharge to Almaden Reservoir (\$5 million).

In an April 21, 2008 letter, the District submitted comments to the Regional Board regarding the TMDL during the adoption process. In the response to comments submitted by the District, the Regional Board made incorrect assumptions regarding the responsibilities of the District, and appears to have misunderstood the point of some of our comments. The District submits the following comments in addition to comments previously submitted to the Regional Board, which we hope you also have an opportunity to review:



#### **Comment 1**

In the response to the District comment 2.1 (April 21, 2008), the Regional Board states that "The District's implementation responsibilities include... a \$135 to \$270 million project for Alamitos Creek... [and] leadership for coordinated watershed monitoring." The portion of Alamitos Creek referred to by the Regional Board is in private ownership. The District has neither ownership nor jurisdictional responsibility for this area, nor does its enabling legislation (District Act) allow for the District to expend public funds to improve private property. Furthermore, the District is not responsible for leadership of coordinated monitoring. In the amendment, this approach is "**encouraged**" by the Regional Board; however, this role cannot be imposed upon the District.

**Request:** The District requests that the State Water Resources Control Board (State Board) clearly indicate in the hearing record that the District does not have legal jurisdiction and thus responsibility to address and/or compel private property owners to meet the requirements contained in the subject Basin Plan amendment. Further, the District requests that the State Board formally recognize in its response to comments that the District is not and will not assume responsibility for cleanup efforts nor for coordinating monitoring associated with the private property owners, and will not solely seek funding for such efforts but will, however, work to encourage a coordinated effort.

#### **Comment 2**

In its responses to several District comments (April 21, 2008), the Regional Board attempts to defend its insistence on monitoring rather than implementation. The current and projected scarcity of resources compels us to prioritize actions that will generate the greatest results. In the State Board September 17, 2009 Notice of Opportunity to Comment (Notice), the Regional Board underestimates the costs of their monitoring requirements; the annual cost for fish sampling as described in their Project Plan is \$200,000 annually (not \$100,000 as stated in the Notice) and the cost for monitoring mercury loads is \$300,000 *annually* (not \$300,000 total as stated in the Notice). This represents a \$2.5 million expense that could otherwise more appropriately be used to remove mercury from the system in the first five years. The District believes that a substantial portion of the information that would be generated by this monitoring is not useful, since we already have data regarding mercury in fish, and estimates of mercury loads to the Bay. The scarce resources expended on this monitoring effort will only further characterize a problem we believe that we have already sufficiently characterized (using \$1 million of District funding). We stress that these scarce resources should be spent towards achieving a result. Finally, the subject Basin Plan amendment provides no incentives for implementation of actions in lieu of monitoring; the scarcity of resources at this time does not allow for both.

**Request:** The District requests that the State Board amend the Basin Plan to include the following footnote in the Implementation Plan section located on page BPA-12: "It is the intent of the Regional Board to consider implementation actions as a higher priority over monitoring activities. Therefore, the Regional Board will work with responsible parties to reduce overall monitoring activities commensurate with the commitment to conduct specific mercury reduction implementation activities."

Ms. Jeanine Townsend  
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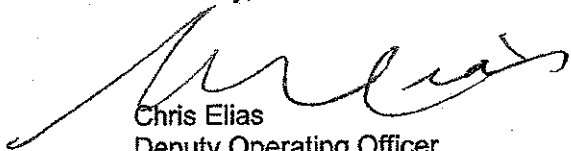
**Comment 3**

In the response to several District comments (April 21, 2008), the Regional Board stated that "[the Regional Board] have not included a "command and control" approach for the District. Rather we offer the District, and only the District, the opportunity to comply voluntarily." The amendment includes a December 31, 2009 date for the District to report on its activities regarding applied studies to reduce methyl mercury concentrations in reservoirs and lakes (the District voluntarily commenced these studies in 2005 in one lake and expanded it to include two reservoirs in 2007, and has made at least two presentations of its findings at Regional Board workshops). Yet, in April 2009 the Regional Board requested a technical report from the District, under threat of enforcement under Section 13267 of the California Water Code, to provide an *outline* of the December 31, 2009 report (and the Regional Board letter included specified content of the outline) by July 30, 2009. This belies the Regional Board statements regarding voluntary compliance being extended to the District as well as shows the Regional Board is unconcerned about the costs to the District for implementation of the TMDL, and for duplicative and unnecessary reporting. Furthermore, since the Basin Plan Amendment is still being considered by the State Board and has not yet been submitted to the Office of Administrative Law (OAL) or US Environmental Protection Agency (EPA), the amendment (along with the requirements) would not be effective until all approvals are obtained, and the compliance dates in the amendment are not consistent with this process.

**Request:** The District requests that the State Board clearly indicate in the hearing record the meaning of voluntary compliance vis-à-vis "command and control" compliance, including identification of incentives to encourage voluntary compliance. Also, the District requests that the State Board suspend all compliance dates in the Basin Plan Amendment and instruct the Regional Board to revise these compliance dates *after* the Basin Plan Amendment has been through the *entire* approval process (with the earliest compliance date one year from the conclusion of the process), including approval by the US EPA.

If you have any questions or concerns please contact me at (408) 265-2607 extension 2379, or Dave Drury at extension 2721.

Sincerely,



Chris Elias  
Deputy Operating Officer  
Lower Peninsula/West Valley/Guadalupe Watershed

cc: M. Klemencic, B. Goldie, A. Gurevich, D. Drury, F. Maitski  
Carrie Austin, RWQCB 1515 Clay Street, Suite 1400 Oakland, CA 94612  
Bruce Wolfe, RWQCB