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WSPA2**Author:** Kevin Buchan **Title:** Mr. **Organization(s):** Western States Petroleum Association**Address:** 1320 Willow Pass Road, Suite 600, Concord, CA 94520**Interest Group:** INDUSTRY**Date:** 2/16/2017**Contact person:** Kevin Buchan**Phone:** 925-266-4083**E-mail:** Kevin@wspa.org

Letter: WSPA2, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self-Description
<p>The Western States Petroleum Association (WSPA) is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states. WSPA offers this comment package with attachments on the State Water Resources Control Board’s (Board’s) proposed “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 Mercury Provisions” (Mercury Provisions), which was released for public review on January 3, 2017.</p> <p>Attached are our detailed technical and legal comments, along with the supporting referenced documents. Due to the large size of the attachments, we are emailing our comments in multiple submittal components.</p>			
Response: Comment noted.			
Letter: WSPA2, Pg1, P3	COMMENT	Excerpt: 2	Type: Request: More Time
<p>Executive Summary</p> <p>While stakeholders were aware that the State Water Board was considering these new Draft Provisions, along with the voluminous supporting documents (over 700 pages of information and technical documents), they were not made available to the public for review and comment until January 3, 2017. This has left the regulated public with only 45 days to review, evaluate, and comment on the extensive Draft Provisions.</p> <p>WSPA reiterates our request for an extension to the comment period.</p>			

Responses to Comments—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 Mercury Provisions.

Response: The State Water Board recognizes the significant amount of information associated with the proposed Provisions and values the input of stakeholders throughout the process. Therefore, State Water Board staff held at least 22 outreach meetings from 2014 to 2017 with many stakeholder groups. This outreach effort and stakeholder meetings are discussed in Chapters 2.6.4 and 2.6.5 of the staff report and a list of outreach meetings is included in Tables 2-1 and 2-2. Staff also made the outreach documents available on the Board’s web site to share the components of the proposed Provisions. A notice was sent out on December 16, 2016, alerting interested parties that documents would be available on January 3, 2017, in order to provide advanced notice that the document would be available so interested parties could take full advantage of the forty-five day comment period. In addition, many of the studies and much of the technical information contained in some of the appendices were available long before the release of the Provisions.

The comment period is not extended in order to enable the U.S. EPA to consider the proposed Provisions prior to a court-issued consent decree of June 30, 2017, as described in section 1.2 of the Staff Report. As additional background, the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires that the Water Boards set water quality objectives (Wat. Code § 13421) and establish a program of implementation to achieve water quality objectives, which includes a description of actions necessary to achieve the water quality objectives, a time schedule for the actions to be taken, and monitoring to determine compliance with the water quality objectives in accordance with Water Code section 13242. U.S. EPA has no obligation to designate water quality criteria (objectives) for the water bodies within California, nor does it have an obligation to develop a program of implementation for water quality criteria when it promulgates such criteria.

The proposed implementation program, as well as the designation of the proposed Mercury Water Quality Objectives, has been developed in order to do in a single regulatory action what U.S. EPA will not. Furthermore, the proposed Mercury Water Quality Objectives have been tied to protection of specific beneficial uses (e.g., the 0.2 mg/kg Sport Fish Water Quality Objective has been designed to be protective of the COMM and WILD beneficial uses, as well as others), and would go into effect upon approval of the Office of Administrative Law and U.S. EPA where those beneficial uses have already been designated.

It is unknown what water quality criteria U.S. EPA would promulgate statewide to protect wildlife and threatened and endangered species in order to meet the terms of the consent decree, and whether the proposed criteria would be sufficient to satisfy an Endangered Species Act Review by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. This would result in the Water Boards having to rely upon the existing Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (the SIP), with no modifications as proposed in the Provisions. The SIP does not contain a mechanism regarding translating fish tissue objectives into water column concentrations, and the Water Boards have not developed guidance regarding translation of fish tissue to water. The Provisions, however, contains specific water column translations that have been rigorously calculated and reviewed.

U.S. EPA promulgation of water quality criteria to protect wildlife and threatened and endangered species could result in significantly different, and possibly more stringent, limits (see peer review of Dr. Marc Sandhienrich in Appendix S-14 to S-16, which uses an alternate reference to calculate wildlife targets that would be more stringent). This would result in the Water Boards having to apply those water quality criteria to the

various basin plans, develop guidance for translation of any fish tissue criteria for implementation or default to individual permit writers' interpretation of the water quality criteria, among other regulatory actions. This would result in an immense new workload for the Water Boards.

Finally, the State of California has not adopted statewide methylmercury water quality objectives that are protective of human health, even though a U.S. EPA recommended water quality criterion was drafted 16 years ago. The U.S. EPA is not required to promulgate human health criteria under the current consent decree, and the State Water Board has developed objectives that are protective of human health over the course of years of peer-reviewed research and public outreach. Delaying the State's legal responsibility to adopt human health objectives further is not in the Water Boards' or the State of California's interest.

Letter: WSPA2, Pg1, P4	COMMENT	Excerpt: 3	Type: Split the Project
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WSPA is concerned that the State Water Board has combined issues in the Draft Provisions that are only superficially related. While WSPA understands the Board's desire to assist the U.S. EPA in meeting its June 30, 2017 Consent Decree deadline for adopting mercury objectives relating to wildlife, this deadline does not require that the Board rush to adopt the other portions of the Draft Provisions.

WSPA requests the Board implement a phased approach whereby the wildlife-related objectives are implemented in time to meet the June 30, 2017 Consent Decree deadline.

Response: Water Code section 13050, subdivision (j), requires that water quality control plans contain beneficial uses to be protected, water quality objectives, and a program of implementation to achieve water quality objectives. Water Code section 13240 requires such plans to be established and periodically reviewed and revised, and Water Code section 13170 authorizes the State Water Board to establish water quality control plans in accordance with section 13240. The law does not require each component part of revisions to water quality control plan to be related, although they are in this proposal. As a whole, appropriate water quality standards (including beneficial uses, water quality objectives, and a program to achieve objectives) is being proposed to appropriately augment the Regional Water Boards' respective water quality control plans.

The components of the Provisions are not superficially related, assuming for purposes of discussion that when a water quality control plan is revised all its proposed elements must be significantly related. Humans, as well as wildlife are impacted by mercury in fish tissue and the science related to mercury accumulation in fish is the same for both humans and wildlife.

Water Board Staff held 22 outreach meetings on the Provisions and although separate meetings were held that focused on the Mercury objectives including their implementation and separate meetings to discuss the beneficial use definition at all times staff communicated that they would be proposed as a single project going forward.

In reviewing the data on the effects of mercury in fish tissue, the same levels that are protective of wildlife are also protective of humans that consume up to one meal of fish per week. Studies show that this level of fish consumption is typical of recreational fishers. So, it makes sense to include the Sport Fish objective along with the Prey Fish objective and the California Least Tern Prey Fish objective in the proposed Mercury Provisions.

Additionally, the necessity of developing human health objectives is discussed in Chapter 3.5. In 2001, pursuant to the Clean Water Act section 304(a), the U.S. EPA published the new recommended human health methylmercury fish tissue criterion of 0.3 mg/kg (U.S. EPA 2001) using a default consumption rate of 17.5 grams per day (g/day) – roughly two fish meals per month. This U.S. EPA criterion is a recommended threshold for the nation. To make the criterion enforceable, states must adopt it into their water quality standards. Rather than a criterion expressed as a mercury concentration in the water, the U.S. EPA concluded that it was more appropriate to derive the criterion for methylmercury in the form of a fish tissue concentration. A fish tissue concentration was more closely tied to the Clean Water Act goal of protecting the public health, because it was based directly on the main route that humans are exposed to harmful levels of methylmercury.

In addition, Chapter 3.6 of the staff report states, in part, “Additionally, the statewide human health water quality criterion is outdated. A new water quality objective should be adopted to incorporate the most recent methods used for the U.S. EPA human health criterion for methylmercury (U.S. EPA 2001), and such objective should reflect Californians who consume self-caught fish including California tribes and subsistence fishers. Therefore, the Provisions include the Mercury Water Quality Objectives to protect both wildlife and human health.”

In addition, since neither the Tribal Subsistence Fishing or the Subsistence Fishing beneficial uses have been designated anywhere within California the project will take a phased approach by default. Before the Tribal Subsistence Fishing or the Subsistence Fishing objectives may be applied to any waters the local Regional Water Board will need to determine if those uses exist within the water body being considered. This consideration goes through a public process before the Regional Water Board can make any determination. Once designated, additional studies should be conducted to determine the levels of consumption and the types of fish being consumed so that appropriate thresholds can be established.

Letter: WSPA2, Pg1, P6	COMMENT	Excerpt: 4	Type: Attainability
It is not clear from the Draft Staff Report or Draft Provisions that reasonable achievability of the objectives, or a program for implementation, has been sufficiently considered by the Board, or will be considered by the Regional Water Boards before designating the new beneficial uses and associated water quality objectives.			
Response: There is no requirement to look at the reasonable achievability of the objectives. Water Code Section 13241 requires the Water			

Boards to set water quality objectives to “objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses [...]. Factors to be considered by a [water board] in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: (a) Past, present, and probable future beneficial uses of water. (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. (d) Economic considerations. (e) The need for developing housing within the region. (f) The need to develop and use recycled water.” Chapter 10 of the staff report discusses and considers all of the Water Code 13241 factors. In particular Chapter 10.1.3 looks at water quality conditions that could reasonably be achieved through the coordinated control of all factors affecting water quality. The Staff Report acknowledges the difficulty in attaining the water quality objectives in parts of the state due to legacy sources of mercury and atmospheric deposition. The Staff Report concludes the discussion on attainability, stating that “It may take a significant period of time to attain the objectives by implementing the mercury controls in the Provisions and developing and implementing other water quality control programs, such as TMDLs.” Additionally, the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective may be very difficult to achieve in most waters as discussed in Section 6.5. However, the levels of mercury vary greatly by fish species and in some waters some fish species, such as rainbow trout and anadromous salmonids, are safe to eat at the consumption rate included for the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective. Moreover, it is anticipated that the coordinated control of all factors can improve water quality in many waters.” (Pg. 264).

Chapter 7 of the staff report analyses the reasonably foreseeable methods of compliance and looked at all sources of mercury and developed a program of implementation that can address all sources of mercury. The major reasonably foreseeable methods of compliance for mercury control are:

- Institutional controls, such as mercury minimization plans, to keep mercury from entering into the environment.
- Mercury removal methods to remove mercury from the environment.
- Sediment controls to prevent mercury in the environment from entering the waterways.
- Water management practices to prevent or reduce the conversion of elemental mercury to methylmercury.” (Pg. 168)

In some areas, such as mining and non-point source controls there are no additional tools needed to control mercury in to the waters. Chapter 7.1.3 of the staff report discusses the efficacy of sediment control in reducing mercury loading to water. “Mercury actively adheres to solids, including sediments. Sediment contaminated with diffuse mercury introduces mercury into aquatic environments when it erodes and flows into nearby waterbodies. Controlling this source of mercury is achieved by preventing the sediment, or runoff moving over the sediment from reaching waterbodies.”

Sediment controls are most needed in areas contaminated by mercury from mining activities or areas where soils are naturally enriched with mercury. However, due to atmospheric deposition, all soils throughout California are potential sources of mercury contamination when eroded

providing sediments that wash into our waterways.” (Pg. 168). Relying on sediment controls for non-point source dischargers and storm water was also addressed in the peer review. Dr. Marc W. Beutel said “The focus on sediment and erosion control in the Storm Water Discharges section of the draft amendment, with a particular emphasis on control measures in areas where soils are naturally rich in mercury or have a history of mining activity, is appropriate” (S-10).

Finally, there is no requirement for the water boards to adopt a program of implementation where all of the tools already exist to control the discharge of mercury. However, there is significant discussion of the reasonably foreseeable methods of compliance on Chapter 7 which includes a discussion for which no new regulatory provisions are included as they would be redundant. In addition, chapter 4.5.1 shows existing concentrations of mercury in waters in California having a median methylmercury concentration of 0.053 ng/L which is below the calculated bioaccumulation factor of 12 ng/L that would impair fish tissue. However, the maximum concentration in water is 0.21 – almost twice that which could lead to fish tissue concentrations above the water quality objectives.

Please see Response to Comment WSPA2-5.

Letter: WSPA2, Pg2, P1	COMMENT	Excerpt: 5	Type: Attainability
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WSPA requests that more attention and focus be given to reasonable achievability and implementation of the objectives prior to designation of any water bodies, and that such achievability analysis and implementation program be specifically required in accordance with the Water Code §§ 13050 and 13241(c).

Response: Water Code sections 13050 and 13241 do not require or suggest that an achievability analysis be performed before a water body is designated with beneficial uses. See the Staff Report, at Sections 6.4.3, 6.5.2, and 6.5.3, which discusses factors a water board may consider when designating a water body with beneficial uses.

Water Code sections 13050 and 13241 do not require the State Water Board to conduct an achievability analysis when establishing water quality objectives and a program of implementation. Section 13050 contains definitions used in the Porter-Cologne Act. Water Code section 13241 requires the Water Board to establish water quality objectives to “ensure the reasonable protection of beneficial uses [...]” When establishing a water quality objective, section 13241 requires the Water Board to consider a number of factors, but performing or considering an achievability analysis is not one of the factors. The Staff Report includes consideration of all the 13241 factors, see Section 10.1.1 through 10.1.6. Water Code section 13241 does not require a Water Board to demonstrate the effectiveness of the proposed program of implementation to achieve the water quality objectives. Water Code section 13242 requires that a program of implementation to achieve water quality objectives contain (a) a description of the nature of actions necessary to achieve the objectives, a time schedule, and a description of required surveillance to determine compliance with the objectives. The Provisions, at Chapter IV, satisfies the requirements of section 13242. Insofar as mercury inputs for specific waters are relatively high, from point sources and nonpoint sources, including atmospheric deposition or legacy mines, and the

water quality objectives are not achieved, development of TMDLs would be appropriate for those waters.			
Also, Please see Response to Comment WSPA2-4.			
Letter: WSPA2, Pg2, P2	COMMENT	Excerpt: 6	Type: Economics
In addition to requiring reasonable achievability of objectives and an implementation program, the Water Code also requires the Board to take into account “economic considerations” when setting water quality objectives. (Water Code § 13241(d)). This has not been adequately completed in the Draft Staff Report.			
Response: Please see Response to Comment WSPA2-5 regarding reasonable achievability of objectives.			
Water Code section 13241 directs Regional Water Quality Control Boards to “...establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance...” Economic considerations is one of six of the factors the board would consider to establish water quality objectives; these considerations have been addressed for the statewide objectives by expert economists in the economic analysis. This economic analysis is included as Appendix R of the staff report. In addition, Chapter 10.1.4 discusses the “Economic Considerations” and Chapter 6.13 also includes a through discussion of economics when looking at how effluent limits should be calculated.			
Letter: WSPA2, Pg2, P3	COMMENT	Excerpt: 7	Type: UAA
WSPA is concerned that the Draft Provisions do not require the Regional Water Boards to conduct a use attainability analysis prior to designating water bodies with the new T-SUB, SUB, or CUL beneficial uses. This is in conflict with the federal Clean Water Act (CWA), 40 C.F.R. § 131.10(j)(1), which requires states to conduct a use attainability analysis as described in 40 C.F.R. § 131.10(g) whenever designating uses not specified in section 101(a)(2) of the CWA.			
Response: The Staff Report does not indicate that a Use Attainability Analysis (UAA) is required for all three proposed beneficial uses because the Provisions contain proposed use categories and definitions and does not provide guidance on the manner in which a Regional Water Board may designate any water body with one of the beneficial uses. Additionally, as a matter of law, the federal regulations implementing the Clean Water Act specify when a UAA is required (40 C.F.R. § 131.10(j) and when a UAA is not required (Ibid., § 131.10(k)). U.S. EPA has further explained: “The CWA distinguishes between two broad categories of uses: uses specified in section 101(a)(2) of the Act and uses specified in section 303(c)(2) of the Act. For the purposes of this final rule, the phrase “uses specified in section 101(a)(2) of the Act” refers to uses that provide for the protection and propagation of fish,13 shellfish, and wildlife, and recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life. A “subcategory of a use specified in section 101(a)(2) of the Act” refers to any use that reflects the subdivision of uses specified in section 101(a)(2) of the Act into smaller, more homogenous groups for the purposes of			

reducing variability within the group.¹⁴ A “non-101(a)(2) use” is a use that is not related to the protection or propagation of fish, shellfish, wildlife or recreation in or on the water. Non-101(a)(2) uses include those listed in CWA section 303(c)(2), but not those listed in CWA section 101(a)(2), including use for public water supply, agriculture, industry, and navigation.” (80 Fed. Reg. 51024 (Aug. 21, 2015).) The three beneficial uses would be construed as tiered or subcategory section 101(a)(2) uses insofar as they pertain to recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life. A UAA is only required when establishing tiered 101(a)(2) uses where the criteria to protect the uses is less stringent than the broad 101(a)(2) designation which is not the case in this instance.

Finally, the comment misstates Code of Federal Regulation, title 40, section 131.10(g). Section 131.10(g) does not require a UAA to be performed before a non-fishable-swimmable use may be designated. That section does not distinguish between 101(a) and non-101(a) uses. Section 131.10(g) requires a state to perform a UAA to *remove* a use (that is not an existing use), and does not require a state to perform a UAA when *designating* a use.

Accordingly, the Staff Report will not be revised as requested by this comment.

Letter: WSPA2, Pg2, P4	COMMENT	Excerpt: 8	Type: No Guidance
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WSPA is concerned that the Draft Provisions do not give appropriate guidance to the Regional Water Boards tasked with implementing and assigning the three new beneficial uses to water bodies in their regions. WSPA urges the Board to adopt clear guidance that the Regional Water Boards must follow when considering evidence regarding water bodies being considered for these new beneficial use designations.

Response: Both Federal and state regulations and statutes give broad direction and guidance for designating beneficial uses. Additionally, the Staff Report and Appendix T provide background for this rationale. Appendix T states, “The Regional Water Boards may consider whether the beneficial use is existing, or is a probable future use to determine when to designate a beneficial use during a basin planning process.” Any designation will include a public participation process as well.

The development of the guidance would increase the scope of the Provisions. Such guidance would need to be developed in collaboration with tribes, environmental justice advocates, the State Water Boards Office of Public Participation and Regional Water Boards.

Letter: WSPA2, Pg2, P5	COMMENT	Excerpt: 9	Type: SED/CEQA
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The Substitute Environmental Document (SED) portion of the Draft Staff Report purports to analyze the environmental impacts resulting from reasonably foreseeable means of compliance, as required by the California Environmental Quality Act (CEQA). Even in a programmatic review of a regulatory action that is intended to benefit the environment, CEQA requires a full and fair evaluation of its potential to result in adverse

environmental side-effects. The SED refers vaguely to “major facility upgrades” and “additional infrastructure” that will be needed for at least some number of publicly owned and industrial wastewater treatment facilities to comply with effluent limitations that will result from the new objectives. Without adequately evaluating the environmental impacts of treatment facility upgrades, the SED fails to fulfill the basic requirements for a CEQA document.

Response: The State Water Board’s Staff Report cannot describe specific upgrades to every facility in the state; given the diversity of types of facilities.

The SED is required to identify the reasonably foreseeable methods of compliance and include an environmental analysis of the reasonably significant adverse environmental impacts associated with those methods of compliance with the Provisions. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4); Pub. Resources Code, § 21159, subd. (a)). The State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply. The environmental analysis is only required to account for a reasonable range of environmental, economic, and technical factors (Cal. Code Regs., tit. 23, § 3777, subd. (c); Pub. Resources Code, § 21159, subd. (d)).

A description of the reasonably foreseeable methods of compliance and/or compliance actions is contained in Chapter 7 of the Staff Report and the environmental analysis of the reasonably foreseeable methods of compliance is contained in Chapter 8 of the Staff Report. Sections 7.2.7 through 7.2.11 identify the methods of compliance by wastewater treatment plants and industrial dischargers. While the Staff Report generally refers to “major facility upgrades” and “additional infrastructure” on topics related to such methods, the Staff Report describes those methods more specifically at Section 7.2.7 (“The effect of these anticipated effluent limitations, together with the need to achieve mercury effluent limitations, may result in facility upgrades. Facility upgrades would be a significant constriction project to a plant that only has a secondary level of treatment. The upgrade would likely add nitrification and denitrification steps to the treatment process, or add additional filtration.”) (See also Staff Report, § 7.2.10, which explains that most tertiary treatment plants with nitrification and denitrification processes have mercury concentrations less than 4 ng/L in the effluent – implying that such facility would be the type of upgrade to comply with applicable water quality objectives and that facilities with only secondary treatment would need to build additional infrastructure to meet an effluent limit of 4 ng/L or less.). Additionally, Section 7.2.7 has been revised to further describe this method of compliance.

Section 8.1.2 of the Staff Report contains a detailed explanation of the level of environmental impact analysis performed and the regulatory basis of that analysis.

Letter: WSPA2, Pg2, P6	COMMENT	Excerpt: 10	Type: Attainability
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The proposed effluent limitations for individual NPDES dischargers may not be attainable (especially 1 ng/L).

Response: The Staff Report discusses options for determining effluent limitations in Chapter 6.13. In addition, Appendix N discusses the

<p>current performance of NPDES discharges. Figure N.1.2 shows that most of the dischargers that would be subject to the Provisions are discharging into flowing waters and would be subject to a water column translator of 12 ng/L. Table N-6 demonstrates under current conditions that over 90% of the POTW dischargers would currently meet an effluent limit based on a water column translator of 12 ng/L, and about 70% of non-POTW point source dischargers could meet an effluent limit based on the water column translator of 12 ng/L. Table N-8 does show that approximately 17-27% of facilities, under current performance, could meet an effluent limit based on 1 ng/L. However, there are no slow moving waters that have been designated with the beneficial uses of T-SUB or SUB that would require such a stringent water column translator. The economics analysis notes that the Water Boards should consider the use of compliance schedules and variances when and if such water column translators would be applicable. In addition, for dischargers that might not be able to attain effluent limitations immediately, the Provisions allows the use of site-specific translators, site-specific objectives, development of TMDLs, a variance, or a compliance schedule.</p>			
Letter: WSPA2, Pg2, P7	COMMENT	Excerpt: 11	Type: Dilution Credits
<p>Consistent with Board precedent, dilution credits and mixing zones should be allowed, if warranted by site-specific conditions, for NPDES discharges containing mercury</p>			
<p>Response: The language in the Provisions has been modified to allow consideration of other factors when determining the applicability of a mixing zone. The following language has been added: <u>“A dilution credit should be denied if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES and other information indicates a lack of assimilative capacity, including the hydraulics of the water body, potential for bioaccumulation, or other pertinent factors.”</u></p>			
<p>In addition, see Response to Comment WSPA2-40.</p>			
Letter: WSPA2, Pg2, P8	COMMENT	Excerpt: 12	Type: Variance Policy
<p>Unless significant changes are made to the Draft Provisions, the State Board should also implement a variance policy because, in many cases, the proposed water quality objectives will be unattainable.</p>			
<p>Response: A variance policy is not required under the current federal regulations contained in 40 Code of Federal Regulation 131.3(o), which contains an express framework for a Water Board to adopt a water quality standards variance. The Water Boards may develop and adopt a water quality standards variance under federal and state authority without a statewide variance policy. The State Water Board is developing variance provisions in another project so that state regulations contain a clear reference to the existing federal regulations and requirements. However, there is no barrier to any Water Board developing and adopting a variance now, in the absence of a state regulation.</p>			
Letter: WSPA2, Pg2, P9	COMMENT	Excerpt: 13	Type: BU/Designation

<p>Mercury concentrations in many of the state’s water bodies have exceeded the proposed objectives for decades or longer. As such, certain beneficial uses are not existing uses as defined by the Clean Water Act. The proposed Draft Provisions should be modified to provide guidance regarding implementation measures and time schedules for “goal uses.”</p>			
<p>Response: This comment is addressed by section 10.2 of the Staff Report. Section 10.2, in part, states: “the Provisions includes a program of implementation in order to achieve the water quality objectives and monitoring and reporting requirements, as described in the Provisions (Appendix A). The time schedule for compliance would be determined on a discharge-by-discharge basis by the Water Boards. Timelines for compliance are already established by existing programs and in the State Water Board’s Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Resolution 2008-0025). After the effective date of the Provisions, the requirements to implement the Provisions would be incorporated into permits and Certifications as they are adopted, reissued, or modified.”</p>			
<p>Also, Please see Response to Comment WSPA2-8 regarding the request that the Provisions include guidance.</p>			
<p>Letter: WSPA2, Pg3, P1</p>	<p>COMMENT</p>	<p>Excerpt: 14</p>	<p>Type: Too Stringent</p>
<p>The proposed fish tissue objectives for the protection of human health and wildlife are likely too conservative, and the proposed water column targets are flawed. Neither the objectives nor the targets should be adopted at this time.</p>			
<p>Response: As explained in Appendix H of the Staff Report, the water quality objective for human health was calculated using U.S. EPA’s equation for calculating fish tissue criterion. U.S. EPA encourages states to modify the fish intake rate to protect the population of concern. In setting the fish consumption rate, Board staff considered several fish consumption studies that were conducted in California. Appendix G includes a dozen studies that were considered. Board staff settled on the fish consumption rate from the 2001 San Francisco Bay Seafood Consumption Survey. As explained in Appendix H, this study is recognized as one of the best and largest surveys to date in California, and is the basis of the one meal a week fish consumption rate that has been used in the past by Water Boards and other agencies. This study was used to derive Fish Contaminate Goals by the Office of Environmental Health Hazard Assessment (OEHHA), which is described in Appendix E of the Staff Report. The one fish meal per week rate has also been used to establish a site-specific water quality objective for the San Francisco Bay and the Sacramento-San Joaquin Delta.</p>			
<p>Appendix J includes the considerations for setting an appropriate fish tissue objective to protect wildlife. Board staff reviewed studies and literature on the effects of mercury on fish, birds, and mammals and considered the most appropriate fish tissue objectives for the protection of wildlife. A summary of suggested methylmercury thresholds from peer reviewed literature are included in Tables J-1 and J-2 of Appendix J.</p>			
<p>The Information in Appendices H and J was included in the information submitted for peer review. The peer review comments and Board staff responses are included in Appendix S of the Staff Report. The peer reviewers determined that the proposed fish tissue objectives for the protection of human health and wildlife are appropriate with one exception. They commented that the fish consumption studies for subsistence</p>			

fishing in California are inadequate to set a statewide numeric objective for subsistence fishing. Subsequently the Provisions were modified to include a narrative rather than a numeric objective for subsistence fishing.			
Letter: WSPA2, Pg3, P2	COMMENT	Excerpt: 15	Type: Change Implementation
The implementation program in the State’s proposed policy should be modified to focus on implementation actions that will lead to reductions in mercury in the state’s waters and fish.			
Response: The program of implementation recognizes all sources of mercury and is expected to lead to reductions of mercury in fish tissue. In accordance with Water Code section 13242, “A description of the nature of actions which are necessary to achieve the objectives.” The program of implementation addresses controls for controllable sources of mercury including non-point sources, mining, and storm water controls in addition to requirements for point sources. Should waters exceed the new water quality objectives a TMDL would be established that would take into account specific sources in a watershed. It is not possible to develop a detailed watershed specific implementation program for a statewide water quality objective. In addition, Chapter 4 discusses in detail the potential sources of mercury in the environment and Chapter 7 of the Staff Report adequately describes the reasonably foreseeable methods of compliance. Where existing regulatory programs are in place there is no requirement for these provisions to restate the existing regulatory authority.			
Letter: WSPA2, Pg3, P3	NOT COMMENT	Excerpt: 16	Type: Greet/Ending
WSPA appreciates the opportunity to submit our comments, and looks forward to reviewing Staff’s responses. Thank you.			
Response: Comment noted.			
Letter: WSPA2, Pg4, P1	NOT COMMENT	Excerpt: 17	Type: Self-Description
[Following comments are prepared for WSPA by Pillsbury Winthrop Shaw Pittman LLP]			
Pillsbury prepared these comments on behalf of the Western States Petroleum Association (WSPA) regarding the Proposed 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 Mercury Provisions, dated January 3, 2017 (hereinafter referred to as the “Draft Provisions” or “Draft Staff Report”).			
Response: Comment noted.			
Letter: WSPA2, Pg4, P1	COMMENT	Excerpt: 18	Type: Not enough time

Responses to Comments—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 Mercury Provisions.

I. Process and timeline for adoption

A. Failure to give adequate time to review/provide meaningful comments on lengthy and complex Draft Provisions

While stakeholders were aware that the State Water Board was considering these new Draft Provisions, in part to assist the U.S. EPA in complying with its Consent Decree requirements by the June 30, 2017 deadline, the Draft Provisions themselves, along with the voluminous supporting documents (over 700 pages of information and technical documents), were not made available to the public for review and comment until January 3, 2017. This has left the regulated public with only 45 days to review, evaluate, and comment on the extensive, and at times complex, Draft Provisions. Such a short comment window does not provide a reasonable opportunity for comment or input by the public and therefore WSPA reiterates its request for an extension of the comment period.

Response: Staff recognize the length and complexity of the Provisions and supporting documents, which is one reason staff held a number of outreach meetings in 2014 through 2016 and two workshops in 2017. See Chapters 2.6.4 and 2.6.5 and Tables 2-1 and 2-2 of the Staff Report for details on the outreach meetings. Staff also made the outreach documents available on the Board’s web site to share the components of the proposed Mercury Provisions. A notice was sent out on December 16, 2016, alerting interested parties that documents would be available on January 3, 2017, in order to provide advanced notice that the document would be available so interested parties could take full advantage of the forty-five day comment period.

In addition, many of the studies and much of the technical information contained in some of the appendices were available long before the release of the Provisions. These include Appendices C – List of Waters Impaired by Mercury, D – Description of the Nine Water Board Regions, E – Related Government Mercury Programs, F – Abandoned Mines and Suction Dredge Mining, G – Fish Consumption Studies, J – Review of Effects on Wildlife, M – Summary of Mercury TMDLs, N – Wastewater and Industrial Dischargers, O – Methods to Measure Mercury, and P – Storm Water Permits.

Letter: WSPA2, Pg4, P3	COMMENT	Excerpt: 19	Type: Split the Project
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[I. Process and timeline for adoption]

B. Wildlife criteria should be implemented and considered separately from other Draft Provisions.

WSPA is concerned that the State Water Board has combined issues in the Draft Provisions that are only superficially related. While WSPA understands the Board’s desire to assist the U.S. EPA in meeting its June 30, 2017 Consent Decree deadline for adopting mercury objectives relating to wildlife, this deadline does not require that the Board rush to adopt the other portions of the Draft Provisions, namely the three new

categories of beneficial uses (T-SUB, SUB, and CUL) and associated objectives. Instead, the Board should implement a phased approach whereby the wildlife-related objectives are implemented in time to meet the June 30, 2017 Consent Decree deadline, while the remainder of the Draft Provisions can be set out on a different track to allow the regulated community a chance to fully consider and understand the technical and scientific implications of the issues.

Response: The regulated community has been repeatedly advised of the technical and scientific implications of the proposed beneficial use definitions, beginning with stakeholder meetings in 2014; draft versions of the proposed beneficial uses have been presented to the regulated community or representatives thereof since the February 16, 2016 Board Meeting. These definitions along with proposed changes were discussed with a variety of stakeholders during a series of meetings in the summer of 2016 and a version of the definitions were presented to the Board at the September 20, 2016 Board meeting. Stakeholder groups directly affected by the proposed beneficial use definitions (i.e., California Native American tribes, Environmental Justice groups) have requested that the proposed beneficial use definitions be no longer delayed.

Also, Please see Response to Comment WSPA2-3.

Letter: WSPA2, Pg5, P1	COMMENT	Excerpt: 20	Type: inadequate notice/other pollutants
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II. Inadequate notice

A. Draft Provisions will have far broader impacts on dischargers than identified by the Board

In reviewing the Draft Provisions and Draft Staff Report, WSPA notes that the full implications of the Draft Provisions are not identified or addressed by the Board. This failure to fully brief the issues, and be transparent about all of the implications of this proposed regulatory action, deprives the public of adequate notice.

The Draft Provisions and Draft Staff Report focus on new mercury objectives that are designed to protect human health and wildlife. These objectives are expressed in mercury fish tissue levels. However, the other key element of the Draft Provisions is the development of three new beneficial uses, two of which are based on subsistence fishing (T-SUB and SUB). The Board briefly acknowledges in the Draft Staff Report that attaining water quality sufficient to support these two subsistence fishing uses is not dependent on mercury alone. “Another complication is that the attainability of a subsistence objective would depend on the levels of other contaminants in the fish tissue, not just mercury.” (Draft Staff Report p. 113) For example, there are other bioaccumulative contaminants present in state water bodies, such as PCBs, selenium, and dieldrin, which must be at acceptable levels in fish tissue before the subsistence uses can actually be supported. As stated in the Draft Staff Report: “[A]lthough the issue here is limited to evaluating whether the beneficial uses should be established and defined, designating and protecting these uses will come with challenges. There are a few contaminants, including mercury and PCBs, which accumulate in fish tissue and

Responses to Comments—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 Mercury Provisions.

can prevent many water bodies from supporting a subsistence level of fish consumption in California.” (Draft Staff Report, p. 106)

Therefore, WSPA is concerned that this action, while clearly flagging the mercury issue for the regulated public, fails to put stakeholders on notice that other permit effluent limits and/or TMDLs may be reopened in order to achieve the beneficial uses described in the Draft Provisions. This means that other interested parties may not have an opportunity to comment on these Draft Provisions since the full spectrum of impacts are not discussed in the Draft Staff Report or even identified in the notice.

Response: During the outreach meetings information was presented that additional objectives, in addition to mercury, may be needed to protect the new beneficial use categories. In additions that Staff report at Chapter 6.4 states:

“A water quality objective for one beneficial use may be sufficiently protective of other beneficial uses. As a result, even when new beneficial uses are designated for a water body, new designations do not necessarily mean that additional water quality objectives, restrictions on waste discharges, or other new or different actions will be necessary. Existing water quality objectives for an existing beneficial use may be sufficient to protect the newly added beneficial uses. In instances where water quality objectives for existing beneficial uses are not protective of newly added beneficial uses, new water quality objectives may need to be developed. On the other hand, even when a new beneficial use is designated for a water body, the designation does not necessarily mean that an additional water quality objective, restriction on waste discharges, or other new or different action would be necessary to protect those uses. Existing water quality objectives for an existing beneficial use may be sufficient to protect the newly added beneficial uses.

For example, fish consumption associated with the subsistence uses (SUB and T-SUB) generally includes larger amounts and/or different species than normally consumed by recreational fishers in California. In some waters containing species of bass, subsistence fishers may be predominantly catching and eating trout or perch or another species of TL3 fish. If the COMM objective is applied to recreational fishers consuming bass the objective may be sufficiently protective of subsistence fishers in the same water body eating predominantly perch. For the CUL beneficial use, objectives designed to protect recreational swimmers may be sufficiently protective of many tribal traditional and cultural activities involving contact with water. However, other activities in the water pertaining to tribal traditional and cultural uses may present a higher chance of ingesting water, or a greater exposure to toxins or bacteria, placing people at a higher risk to illness. This is because some of the traditional and cultural practices involve people spending a longer time in the water or in contact with the water. For example, basket weaving involves placing reeds in water then in the mouth repeatedly. Other factors increase the potential exposure to contaminants in the water, such as the particular type of activity (e.g. whole body emersion), and locations that have rugged conditions which can make minor skin abrasions or cuts more likely.”

The proposed beneficial use definitions would allow the Water Boards to establish beneficial uses where those Boards determine those beneficial uses to be applicable. The proposed Mercury Water Quality Objectives would establish water quality objectives for mercury/methylmercury, and that pollutant alone, where applicable to beneficial uses. The Provisions, and indeed this entire project, mentions but does not endorse or recommend any future action regarding any pollutant that is not mercury; the example given by Commenter is PCBs.

As the regulatory system is, the support or attainment of an individual beneficial use for a given waterbody is evaluated for each pollutant individually. A beneficial use may not be supported because of one or more individual pollutants. The proposed Provisions only establish measurable mercury objectives for existing and proposed beneficial uses. The only possible effect of these Provisions would be to find that a water body is not attaining a beneficial use as determined in a Regional Water Board basin plan for a proposed mercury objective. This would happen, at a minimum, several years in the future. The new beneficial uses are not being designated to any waterbodies in the state with this rulemaking. The objectives being proposed are solely related to mercury. No objectives other than the mercury objectives associated with the proposed beneficial uses have been developed, nor are they being proposed.

Given that designation of proposed beneficial uses is, in general, under the purview of the Regional Water Boards, and that such action requires a Basin Plan Amendment on the part of the Regional Water Board and that objectives associated with other bio-accumulative pollutants have not been developed, it would be highly speculative, or even not feasible, to even attempt to determine what the “full spectrum” of impacts to the regulated community will be beyond that actual proposed mercury objectives and beneficial use definitions that are delineated in these proposed Provisions.

Letter: WSPA2, Pg6, P1	COMMENT	Excerpt: 21	Type: Arbitrary and Cap
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III. Arbitrary and capricious to target permitted point source dischargers when objectives will not be achieved through such targeting; economics not properly considered

A. Focusing mercury reductions on municipal and industrial dischargers will not achieve the state’s objectives given the small relative contribution of these sources

While WSPA is sympathetic to the environmental justice implications involved in creating the new beneficial uses and the public health goals behind setting ambitious objectives with respect to mercury concentrations in fish tissue, WSPA is concerned that the Draft Provisions will not and cannot achieve the stated objectives associated with the new beneficial uses. As recognized in the Draft Staff Report, mercury is a contaminant that accumulates in fish tissue and persists in the environment such that, “[e]ven if all sources of the contaminants are eliminated, the contaminants are likely to remain high for decades. ... Further, current sources may not be directly regulated by water boards (e.g. atmospheric emissions, naturally occurring in soils, or geothermal sources).” (Draft Staff Report, p. 106).

Water Code § 13050 requires water quality control plans to include “a program for implementation needed for achieving water quality objectives.” In addition, prior to setting water quality objectives, the Water Code requires the State Water Board to consider the “[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.” (Water Code § 13241(c)) The State Water Board has itself made statements indicating doubts about the achievability of the water quality objectives associated with the new subsistence beneficial uses. In the Draft Staff Report, the Board states, “[o]nly a fraction of waters would be able to

currently support fish that meet a subsistence-type water quality objective when applied to TL4 fish. In fact, many waters do not have fish that would meet the water quality objective for recreational fishers,” and the objectives for subsistence uses are roughly “three to four times more stringent than the objective to protect recreational fishing.” (Draft Staff Report p 113). Further, the Board notes that attainability of a subsistence objective “would depend on the levels of other contaminants in the fish tissue, not just mercury,” and some waters have elevated levels of other contaminants like dieldrin and PCBs “which may prevent attainment of a subsistence type objective *even if* mercury concentrations are low enough.” (Draft Staff Report p 113, emphasis added).

Response: The Staff report adequately considers the requirements of Water Code Section 13241. The considerations are summarized in Chapter 10 and Water Code section 13241(c) is specifically summarized in Chapter 10.1.3. The Staff Report points out difficulty of final attainment of proposed beneficial uses given sets of pollutants that bio-accumulate in fish tissue, but Staff Report and proposed Provisions are explicitly designed to be protective of beneficial uses due to presence of mercury, not other pollutants. Although the staff report does discuss the possibility that additional water quality objectives may be necessary to protect the new beneficial use categories (See response WSPA 2-20.) The Provisions ultimately require attainment of mercury objectives for the proposed beneficial uses, if those uses are designated; See staff report Chapter.

In addition the staff report discusses that the water quality objectives do not apply only to TL4 fish. The objectives for the protection of T-SUB apply to a mixture of 70% TL3 fish and 30% TL 4 fish. Chapter 4.5.2 points out that “The Sport Fish Water Quality Objective and the Subsistence Fishing Water Quality Objective would apply to trophic level 4 fish, while the Tribal Subsistence Fishing Water Quality Objective would apply to mostly trophic level 3 fish.” The water quality objective for Subsistence Fishing is a narrative objective in order to take into account the variability of the amounts and trophic levels of fish consumed. As summarized in Chapter 6.5.3 of the Staff Report:

The advantage of this option is that is more flexible and can be easily tailored to a water body. Since the data on subsistence fishing indicate that the use is variable around the state (as described in option 3), this option may be the best way to accommodate that variability, rather than proposing one set numeric objective for all of California’s waters, as in option 3. The use of local data is preferred by U.S. EPA rather than using national default values (see Section 6.5.1, U.S. EPA 2000).

With a narrative water quality objective, effluent limitations contained in permits would be determined on a case-by-case basis, therefore, the effluent limitation could be developed considering site-specific factors, such as the discharger’s relative contribution of mercury compared to other mercury sources. Another site-specific factor to consider is the species of fish in the waterbody. If no trophic level 4 fish are present in the water body, then the effluent limitation would not need to be as stringent compared to where trophic level 4 fish are present. The advantage of the narrative water quality objective is that these site-specific considerations could be taken into account without the lengthy regulatory process of adopting a site-specific water quality objective.

Letter: WSPA2,	COMMENT	Excerpt: 22	Type: Too Stringent
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Pg6, P5			
<p>As exemplified throughout the Draft Staff Report (e.g., Table N-11), watershed contributions of mercury vary significantly depending upon source type. In fact, the largest contributors of mercury are not permitted sources such as municipal wastewater and industrial dischargers with NPDES permits. Rather, the largest mercury sources are tributaries, sediment deposition from non-point sources, and legacy mining operations.</p> <p>While WSPA recognizes that mercury objectives are important to protect beneficial uses, the stringency and focus of control in order to achieve those objectives should be commensurate with the source and its corresponding mercury loading. Tighter controls for NPDES point sources will not result in significant reductions in mercury levels to achieve the state’s objectives. Instead, the state should focus more effort, investment, and resources on controlling discharges from non-point sources such as legacy mining sites.</p>			
<p>Response: Section 4.4.3 of the Staff Report, “Atmospheric Deposition,” acknowledges atmospheric deposition of mercury from anthropogenic sources as a significant source of mercury. However, this section also makes it clear that: 1) there is uncertainty regarding the influence of atmospheric deposition on bioaccumulation of methylmercury in fish tissue in general; and that 2) that the influence of atmospheric deposition on methylmercury in fish tissue is vastly different depending on whether atmospheric mercury settles directly on the waterbody or on the terrestrial watershed. This Section also states that “in heavily contaminated environments of California (gold mining regions), atmospheric deposition of mercury is unlikely to play an important role in delivering methylmercury to the food web”, and discusses several Gold Country-specific studies. The conclusion is that the principal sources of methylmercury vary in different parts of the state of California and indeed from watershed to watershed as stated by the commenter, but not that atmospheric and legacy mining sources are <i>always</i> the principal sources of methylmercury in fish tissue. Also, this Section does not imply that NPDES permittees are <i>never</i> a significant source of mercury.</p> <p>Table N-7 in Appendix N of the Staff Report, for example, states that 39 percent of analyzed POTWs and 43 percent of analyzed non-POTW and Federal discharges to all waters exceeded an annual average of 4 ng/L total mercury. Table N-6 states that 8 percent of analyzed POTWs and 29 percent of non-POTW and Federal discharges to all waters exceeded an annual average of 12 ng/L total mercury. Given that some of these discharges are to unimpaired waters, it is probable that some point-source dischargers are, in fact, a significant or the most significant source of mercury in some waterbodies.</p> <p>Commenter states that mercury objectives “should be commensurate with the source and its corresponding mercury loading.” Commenter misconstrues the meaning of water quality objectives. A numeric water quality objective is the desired concentration or load of a pollutant acceptable for the <i>waterbody</i>, e.g. a lake or a river, to meet relevant beneficial uses. Water quality objectives are not the concentration or load of a pollutant acceptable from an anthropogenic <i>discharge</i>. The concentration or load that is appropriate to meet the objective from an individual source is subject to additional measurements and calculations and adjustments, as detailed in the SIP, and for mercury in these Provisions, as modified from the SIP in Chapter IV.D.2 of Appendix A.</p> <p>Finally, should a waterbody still become impaired for mercury, the beneficial uses through the 303(d) process, despite the proposed water quality objectives as applied to individual discharges, the waterbody would eventually be subject to a total maximum daily load (TMDL). In this</p>			

case, a waste load allocation (WLA) would be applied to point-source discharges, and the WLA for these discharges would be determined by the proportion of total load of mercury contributed by point source discharges to the waterbody. If the proportion of the load contributed to the waterbody by point-source discharges is small, then the corresponding WLA would also be small, and the effluent limitations assigned to discharges from point sources large relative to that of other sources.

In addition, Commenter’s exhortation that “the state should focus more effort, investment, and resources on controlling discharges from non-point sources such as legacy mining sites” is noted, although given the difficulty of developing new regulatory programs, further elaboration on how to attain such goals is appreciated.

Also, please see Response to Comment LADWP-5.

Letter: WSPA2, Pg7, P2	COMMENT	Excerpt: 23	Type: Attainability
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It is not clear from the Draft Staff Report or Draft Provisions that reasonable achievability of the objectives, or a program for implementation, has been sufficiently considered by the Board, or will be considered by the Regional Water Boards before designating the new beneficial uses and associated water quality objectives. WSPA requests that more attention and focus be given to reasonable achievability and implementation of the objectives prior to designation of any water bodies, and that such achievability analysis and implementation program be specifically required in accordance with the Water Code §§13050 and 13241(c).

Response: Water Code section 13050 is definitions and not requirements. The commenter does not specify which sub-section of 13050 in particular the Provisions are in conflict with. Water Code Section 13241(c) states “Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area” and is one of six considerations that the Water Boards shall consider when developing Water Quality Objectives. The staff report in Chapter adequately describes the potential sources of mercury in Chapter 4 and the reasonably foreseeable methods of compliance in Chapter 7. Chapter 10.1.1 specifically summarizes the requirement of Water Code section 13241(c) which summarizes the requirements “To achieve the Mercury Water Quality Objectives, the Provisions include implementation requirements for major surface water discharge types that are regulated by the Water Boards, including: historic mines (Section 6.9), nonpoint sources, wetlands, dredging activities (Section 6.10), storm water (Section 6.11), and municipal and industrial discharges (Section 6.13)” (Staff Report pg. 264). In addition, please see responses to Comments WSPA2-5, 21, and 22.

Letter: WSPA2, Pg7, P3	COMMENT	Excerpt: 24	Type: Economics
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[III. Arbitrary and capricious to target permitted point source dischargers when objectives will not be achieved through such targeting; economics not properly considered]

B. The Board has failed to adequately consider economic factors when setting the objectives

In addition to requiring reasonable achievability of objectives and an implementation program, the Water Code also requires the Board to take into account “economic considerations” when setting water quality objectives. (Water Code § 13241(d)). This has not been adequately completed in the Draft Staff Report.

While the Draft Staff Report purports to include the required economic factors analysis in Appendix R, Appendix R entirely omits the most essential portion of the analysis. When discussing the facility upgrades that will be necessary in order to meet the 1 ng/l objective, Appendix R states, “WWTPs that need reductions to meet limits corresponding to lower values, such as those derived from the tribal subsistence objective (1 ng/L) may not be able to do so with tertiary treatment. Due to the limited information on the permittees likely to be subject to this target, this analysis does not estimate costs for complying with the 1 ng/L target.” (Draft Staff Report, Appendix R, p R-46 (emphasis added); see also p R-50).

Response: Economic Considerations are included in Chapter 10.1.4 of the Staff Report. These considerations support the reasonably foreseeable methods of compliance discussed in Chapter 7 of the Staff Report and are discussed in detail in Appendix R. The economic analysis did look at the possibility that all waste treatment facilities may need to upgrade to tertiary treatment with nitrification/denitrification and implement pollution prevention programs to reduce the inflow of mercury coming into facilities. Data shows that facilities with these systems can meet an effluent limit of 4 ng/L, on an annual basis. Table N-7 of Appendix N shows that from 2009 to 2015 seventy three percent of all dischargers, including seventy seven percent of POTWs were able to achieve an effluent limit of 4 ng/L total mercury. Since many of these POTW facilities have only secondary treatment the data substantiates the conclusion that an effluent limit of 4 ng/L is achievable with tertiary treatment. The addition of nitrification/denitrification and pollution prevention programs, as recommended in the Staff Report and considered in the Economic Analysis, would insure that a facility with tertiary treatment can meet a 4 ng/L effluent limit.

In order for a facility to be subject to an effluent limit of 1 ng/L the facility would need to discharge into a slow moving water body that is not subject to a TMDL for mercury. As discussed in Section 6.13.3 of the Staff Report, the majority of discharges are to streams and rivers. In addition, the water body where the discharge occurs would also need to be designated with either the Tribal Subsistence Fishing (T-SUB) or Subsistence Fishing (SUB) beneficial use. The designation of the water body type (fast moving or slow moving) is up to the discretion of the Permitting Authority and the designation of waters with either the T-SUB or SUB beneficial uses would occur during a Regional Water Board action after the beneficial use definitions are approved. Therefore, at the time that the Provisions are adopted no waters will need to meet an effluent limit of 1 ng/L. It is very speculative to try to determine which, if any, water bodies would be subject to an effluent limit of 1 ng/L. If the water where the discharge occurs is subject to a TMDL, then the Regional Water Board will do a load allocation and the discharge may not be subject to an effluent limit of 1 Ng/L if they are not a major contributor of mercury into the water system. In addition, the Mercury Provisions have a clear policy preference for Regional Water Boards to develop site specific objectives for waters designated with T-SUB or SUB beneficial uses and to do site specific bioaccumulation factors and those would be subject to a separate economic evaluation. This may result in less

stringent objectives. For unimpaired waters the Mercury Provisions allow for dilution credits, so the resulting effluent limit may not be nearly as stringent. If the Permitting Authority determines that a discharger must meet an effluent limit of 1 ng/L the discharger may still apply for and receive a variance or a compliance schedule. This will allow the discharger time to find cost effective methods to remove mercury from their effluent.

In Addition, the Provisions have been revised to account for existing TMDLs to allow for effluent limitations to be calculated based on existing mercury TMDLs and the development fo new mercury TMDLs.

Letter: WSPA2, Pg7, P5	COMMENT	Excerpt: 25	Type: Economics
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Moreover, while the Draft Staff Report assumes, without evidence, that the 4 ng/L limitation is achievable with tertiary treatment, data from the Central Valley Regional Board (discussed in WSPA’s accompanying technical comments) indicate that tertiary treatment cannot achieve the 4 ng/L limit in all cases. This amounts to an admission that the economic consideration necessary to evaluate the new water quality objectives has not been done as required by the Water Code. Therefore, the Board must complete an evaluation of economic considerations for all objectives established in the Draft Provisions.

Response: As discussed in Chapters 6.13.3 and 7.2.7 and Appendix N of the Staff Report, the majority of industrial and wastewater facilities discharge into flowing waters and would be subject to an effluent limit of 12 ng/L upon adoption of the Provisions. Only about seven percent discharge into waters that may be classified as slow moving waters and would be subject to an effluent limit of 4 ng/L, upon adoption of the Provisions and reissuance of their permits. As stated in 7.2.8 of the Staff Report and shown in Table N-7 of Appendix N, about 27 percent of all facilities failed to meet an effluent limit of 4 ng/L from 2009 to 2015. Chapter 7.2.8 of the Staff Report states that, “Most tertiary plants with nitrification and denitrification processes have mercury concentrations less than 4 ng/L (annul average) in the effluent because the enhanced filtration maximizes removal of suspended solids.” This is based on a March 2010 study from the Central Valley Water Board titled, A Review of Methylmercury and Inorganic Mercury Discharges from NPDES Facilities in California’s Central Valley Staff Report Final. The staff report concedes that for some facilities pollution prevention programs to reduce mercury in the influent may be needed in addition to tertiary treatment with nitrification and denitrification to meet an effluent limit of 4 ng/L. The Economic Analysis (Appendix R) analyzed the cost of upgrading all POTWs to tertiary treatment and enhanced filtration for Industrial discharges in combination with enhanced pollution prevention programs.

Letter: WSPA2, Pg8, P1	COMMENT	Excerpt: 26	Type: Economics
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Information on which to base the requisite economic analysis is readily available for the types of advanced treatment technologies that would be necessary to reach the 1 ng/L target. For example, a report titled “Treatment Technology Review and Assessment” prepared by the

Association of Washington Businesses, Association of Washington Cities, and Washington State Association of Counties in 2013 (Treatment Technology Report, attached to these comments for incorporation in the record) evaluated advanced treatment processes, specifically membrane filtration/reverse osmosis (MF/RO) and membrane filtration/granulated activated carbon (MF/GAC). The report found that advanced treatment processes incur “significant capital and operating costs,” raising the estimated capital cost of treatment from \$17 to \$29 dollars per gallon per day of capacity, an over 70% increases in capital costs. (Treatment Technology Report, p. ES-2). In addition, the annual operation and maintenance costs triple with the addition of advance treatment options, from approximately \$5 million to \$15 million. (Id.) Use of MF/RO increases costs from \$15–\$32 million in per gallon day of capacity to \$28–\$60 million in per gallon per day of capacity by requiring larger aeration basins, additional pumping stations, new membrane facilities, and additional energy and chemical demand. (Treatment Technology Report, p. 39). Similarly, the use of MF/GAC increases costs from \$23–\$50 million in per gallon per day capacity to \$36–\$78 million in per gallon day of capacity due to the larger aeration basins, additional pumping stations, GAC facilities, additional energy demand, GAC media replacements, and hauling and fees to regenerate GAC off-site. (Treatment Technology Report, p. 40).

Response: No facilities will be required to meet an effluent limit of 1 ng/L upon adoption of the Provisions. As discussed in Chapter 7.2.7 and Appendix N of the Staff Report only about seven percent of facilities discharge into waters that may be classified as slow moving waters. If in the future any slow moving waters are designated with either a T-SUB or SUB beneficial use the dischargers have a variety of options to set appropriate effluent limits. Options include site specific objectives, site specific bioaccumulation factors, and dilution credits. If, in the future any facilities do need to meet a meet an effluent limit of 1 ng/L the Permitting Authority may develop a TMDL, or approve a compliance schedule or a variance to allow the facility to find cost effective methods to meet the effluent limit.

Letter: WSPA2, Pg8, P2	COMMENT	Excerpt: 27	Type: TMDLs
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I. Impact on TMDLs

A. Contradictory information on Draft Provisions’ impact on TMDLs

The Draft Staff Report and Executive Summary thereof, contain numerous representations and interpretations of the Draft Provisions’ impact on TMDLs, indicating that the Draft Provisions will not apply to dischargers under TMDLs. For example, in the Executive Summary, the Board states,

The Provisions which modify the SIP are exclusive to reasonable potential analyses and effluent limitations for mercury. **These modifications do not apply to dischargers to waters that have site-specific mercury water quality objectives or to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) has been approved.**

Executive Summary p. xx, emphasis added. However, other portions of the Draft Staff Report contradict the above statements by indicating that if one of the new subsistence beneficial uses (T-SUB or SUB) is assigned to a TMDL-regulated water body, the TMDL may be reopened to include the more stringent subsistence objectives. (Draft Staff Report, p. 156).

These contradictory statements, at a minimum, need clarification from the Board so the regulated public understands the potential consequences of this action.

Response: Should a new beneficial use be designated or other new information comes to light, the Regional Board should reopen the TMDL and revise it to reflect new information. The adopted TMDL Policy and guidance acknowledges that TMDLs use adaptive management and may require revision when new information is available. However, the implementation provisions contained herein do not supersede existing TMDLS.

As stated on page 156 of the Staff Report: “If there is an existing TMDL for mercury, the TMDL could be reopened and revised to include the Subsistence Fishing Water Quality Objective. Additionally, since the subsistence type uses vary by water body, the Regional Water Boards are encouraged to develop site-specific subsistence water quality objectives at the same time that the beneficial uses are designated. Site-specific water quality objectives may be adopted with compliance schedules that are longer than normal. The longer compliance schedule could allow time for facility upgrades, development of TMDLs, or studies to develop a site-specific BAF to implement the subsistence objective.”

Letter: WSPA2, Pg9, P1	COMMENT	Excerpt: 28	Type: TMDLs
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If it is in fact the intent of the Board that the Draft Provisions will not supersede a mercury TMDL (as is stated in the Executive Summary), then this needs to be stated clearly and consistently throughout the Draft Staff Report and Draft Provisions. If this is the intention of the Board, then WSPA recommends that the Board modify the Draft Provisions, Chapter IV.D.1., as follows:

The implementation provisions of Chapter IV.D shall be implemented through NPDES permits issued pursuant to section 402 of the Clean Water Act, water quality certifications issued pursuant to section 401 of the Clean Water Act, waste discharge requirements (WDRs), and waivers of WDRs, where any of the MERCURY WATER QUALITY OBJECTIVES apply. The implementation provisions ~~pertaining to a particular beneficial use do not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established pertaining to the same beneficial use or uses.~~

Response: TMDLs are established to meet the water quality standards in place at the time of adoption. Therefore if a new beneficial use is designated to the waterbody the existing TMDL may not be adequate to restore the water body and attain the newly designate beneficial use. For that reason the provisions cannot provide a blanket exception to all mercury TMDLs. However, the provisions have been modified to describe when the assumptions of an existing mercury TMDL designed to attain the COMM, WILD, or RARE beneficial uses may be relied upon when establishing a new TMDL to attain the SUB or T-SUB use and that it may be appropriate to just allow a longer schedule for attainment of the beneficial uses and not require additional lower waster load allocations or action.

Letter: WSPA2 , Pg9, P2	COMMENT	Excerpt: 29	Type: TMDLs
<p>If, instead, it is the intention of the Board to allow reopening of mercury TMDLs in order to accommodate new objectives associated with the Draft Provisions, then WSPA urges the Board to reconsider this position. The mercury TMDLs are the result of multi-year, complex processes that involved consideration of all sources of mercury to the various water body systems. These sources were evaluated for their respective contributions of mercury and the mitigation measures available to control these contributions. As noted in the San Francisco Bay TMDL, for example, the industrial and municipal wastewater point source contributions comprise only 1.5 percent of the total mercury contributions to the system. Therefore, reopening the TMDL for the purpose of amending effluent limitations for individual industrial point sources will not meaningfully affect mercury concentrations in the system to allow attainment of more stringent objectives, and instead will only serve to disrupt achievement of the long term goals of the TMDLs that are the result of years of study and negotiation.</p>			
<p>Response: Reopening a TMDL isn't designed to negate the results of multi-year processes but to allow for the evaluation and consideration of new data, results of special studies, new information, and new technology. The existing impaired waters policy and guidance recognizes the adaptive management approach to TMDLs and that it may be necessary to reopen or revisit a TMDL if the underlying assumptions of that TMDL change. A newly designated beneficial use would be a change to the underlying assumptions of an existing TMDL (see http://waterboards.ca.gov/water_issues/programs/tmdl/docs/iw_policy.pdf and http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/iw_guidance.pdf)</p>			
Letter: WSPA2 , Pg10, P1	Choose an item.	Excerpt: 30	Type: UAA
<p>V. Development and implementation of new beneficial uses</p> <p>A. Use attainability analyses must be required prior to designation of new beneficial uses</p> <p>WSPA is concerned that the Draft Provisions do not require the Regional Water Boards to conduct a use attainability analysis prior to designating water bodies with the new T-SUB, SUB, or CUL beneficial uses. This is in conflict with the federal Clean Water Act (CWA), 40 C.F.R. § 131.10(j)(1), which requires states to conduct a use attainability analysis as described in 40 C.F.R. § 131.10(g) whenever designating uses not specified in section 101(a)(2) of the CWA. The uses described in section 101(a)(2) of the CWA are colloquially known as the “fishable-swimmable” uses. The provision sets forth a national goal of attaining water quality “which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . .” 33 U.S.C. § 1251 (a)(2). The T-SUB, SUB, and CUL beneficial uses described in the Draft Staff Report and Draft Provisions fall outside of these “fishable-swimmable” uses under the CWA, and therefore a use attainability analysis must be conducted before the State can designate any water bodies as falling under these beneficial uses.</p> <p>This is particularly important where, as here, the Board has recognized that the objectives associated with the new beneficial uses may be unattainable, regardless of reductions in point source mercury discharges. (see Draft Staff Report p. 113)</p>			

Response: Please see Responses to Comments CVCWA1-7, 37, and WSPA2-7.		
Letter: WSPA2 , Pg10, P3	COMMENT	Excerpt: 31
Type: UAA		
Given the challenges associated with the new beneficial uses and objectives, and pursuant to CWA requirements, WSPA requests that the Board amend the Draft Provisions and Draft Staff Report to provide that use attainability analyses in accordance with 40 C.F.R. § 131.10(g) must be conducted as a prerequisite to designating any water bodies with the new beneficial uses T-SUB, SUB, and CUL.		
Response: Please see Response to Comment WSPA2 -7, CVCWA1-7 and 37.		
Letter: WSPA2 , Pg10, P3	COMMENT	Excerpt: 32
Type: No Guidance		
B. Insufficient detail regarding designation of new beneficial uses by Regional Water Boards		
WSPA is concerned that the Draft Provisions do not give appropriate guidance to the Regional Water Boards tasked with implementing and assigning the three new beneficial uses to water bodies in their regions. This lack of guidance may result in a great discrepancy in how the Draft Provisions are applied in the nine Regions, and could lead to different applications and designations using varying criteria. This will result in great uncertainty and potential unfairness for the regulated community.		
Response: Please see Response to Comment WSPA2-8.		
Letter: WSPA2 , Pg10, P4	COMMENT	Excerpt: 33
Type: No Guidance		
The Draft Provisions require only one specific criterion be met before designating a water body with the new T-SUB beneficial use, which is that a California Native American Tribe must confirm that the designation is appropriate. (Draft Provisions, Chapter II). There are no criteria built into the Draft Provisions relating to the other two new beneficial uses (SUB and CUL), or any further criteria relating to the T-SUB use. The Draft Staff Report provides examples of information the Regional Water Boards may take into consideration when deciding whether to designate a particular water body, but does not require the Boards look at any or all of the example information before making a decision. (Draft Staff Report, p. 108)		
Response: Please see Response to Comment WSPA2-8. Additionally, please note that a Board must have substantial evidence to designate a water body and that any designation is subject to a public participation process.		
Letter: WSPA2 , Pg11, P1	COMMENT	Excerpt: 34
Type: No Guidance		
WSPA is concerned that a lack of basic criteria that must be factored into every designating decision will lead to wildly different and unpredictable results across regions, as well as results that may be politically, rather than scientifically, driven. For example, while the Draft Staff Report suggests that it “may not be reasonable to designate a beneficial use . . . if only one individual is using the water in a way that would meet the beneficial use definition,” the Draft Provisions do not prohibit such application. (Draft Staff Report p 109) The Draft Staff Report also recommends that community consumption studies would preferably be peer reviewed, although this also is not a requirement. (Draft Staff Report p 108)		
Response: Please see Response to Comment WSPA2-8. Since the beneficial uses will likely vary across different regions, the Provisions has a clear preference for the regional boards to account for regional differences during adoption.		

Letter: WSPA2 , Pg11, P2	COMMENT	Excerpt: 35	Type: No Guidance
In order to avoid vastly different applications of the Draft Provisions and ensure state-wide consistency in implementation, WSPA urges the Board to adopt clear guidance that the Regional Water Boards must follow when considering evidence regarding water bodies being considered for these new beneficial use designations.			
Response: Please see Response to Comment WSPA2-8.			
Letter: WSPA2 , Pg11, P3	COMMENT	Excerpt: 36	Type: No Guidance
C. Narrative objective for the SUB beneficial use is vague and subject to vast discrepancies in application across the State			
WSPA is concerned that the decision to assign a narrative water quality objective to the new SUB beneficial use creates a vague and unworkable standard that cannot be applied consistently or fairly across the state. As noted in the Draft Staff Report, using a narrative objective is more flexible and can be easily tailored to a water body (Draft Staff Report p 118); however, this is precisely the downside of a narrative objective as well, since it provides no guidance or predictability for the regulated public. This problem is compounded by the fact that the Board has not imposed any guidelines or standards on the type of evidence required before a water body can be designated with the SUB beneficial use. The Board has not even required there to be a peer-reviewed consumption study conducted for the water body, which should be a bare minimum standard imposed prior to assigning what could be an extremely restrictive beneficial use and water quality objective.			
Response: Please see Response to Comment WSPA2-8. As stated in the Staff Report, the narrative allows objectives to be tailored based on site-specific data. This approach was recommended during external peer review. Please see also Appendix S, Response to Comment MWB-17.			
Letter: WSPA2 , Pg11, P4	COMMENT	Excerpt: 37	Type: No Guidance
The Board itself recognizes these risks, stating “[t]he disadvantage is that the objective may be interpreted in different ways, making the implementation of the objective inconsistent. . . For instance, the objective could be interpreted in eight different ways in eight different permits, resulting in eight different effluent limitations.” (Draft Staff Report p. 118). WSPA urges the Board to reconsider the narrative objective for the SUB beneficial use because the uncertainty it holds for the regulated public, as well as the risk of enormously uneven application amongst dischargers, is not an acceptable regulatory scheme.			
Response: Please see Response to Comments WSPA2-8 and WSPA2-36.			
Letter: WSPA2 , Pg12, P1	COMMENT	Excerpt: 38	Type: BU/Designation
VI. Implementation of Draft Provisions			
A. Amendment of basin plans should occur before any permit changes			
WSPA is concerned that the implementation of the Draft Provisions, and particularly designation of the new beneficial uses, is not being done in a way consistent with past practices of the Board or Regional Water Boards. In a typical circumstance, the Regional Water Boards would go through the public process to amend their basin plans to designate the beneficial use attributable to particular water bodies. In this way, the regulated public would be given notice that certain water quality objectives will apply based on the beneficial uses identified in the basin plan,			

Responses to Comments—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 Mercury Provisions.

and the public would at that time be able to comment on the designations and participate in the process of identifying and substantiating the uses. The Draft Staff Report indicates that this orderly and typical process will not necessarily be followed with respect to the new beneficial uses. Rather, according to the Draft Staff Report, Regional Water Boards can incorporate the subsistence fishing objectives in a permit “prior to formal designation if the Water Boards determine that tribal subsistence or subsistence fishing is an existing use.” (Draft Staff Report, p. 11). This permit-by-permit approach denies the public an opportunity to comment on the designation decision, which can have significant implications for stakeholders.

Response: The Provisions articulates three beneficial use categories pertaining to CUL, T-SUB, and SUB. The Provisions does not propose any waters be designated. (Provisions, Chapter II (“A Regional Water Quality Control Board shall use the beneficial uses and abbreviations listed below; to the extent it defines such activities in a water quality control plan.”).) The Regional Water Board that has jurisdiction over a particular waterbody is in the best position to make the designations, which is the customary practice of the Regional Water Boards. (Staff Report, Section 6.4.3.) “A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).” (Ibid.; see also Staff Report, App. T.4-T.6 (discussing the manner in which designations would occur.)) The water quality objectives would apply to the beneficial uses for a particular water body upon such designation. Any permit requirements to implement the subsistence fishing mercury objectives generally would occur after a Regional Water Board has the ability to evaluate and render decisions on appropriate designations in a basin planning process.

Additionally, Water Code section 13263 requires permits to include requirements that take into consideration the beneficial uses to be protected. Effluent limitations must be protective of beneficial uses and antidegradation policies, which comprise water quality standards. The State Water Board has interpreted State Water Board Resolution No. 68-16 to incorporate the federal antidegradation policy and both policies are applied in individual permitting decisions, including issuance of waste discharge requirements and NPDES permits. Pursuant to the federal antidegradation policy, “existing uses” must be protected, even if they have not been designated to a specific water quality control plan. (40 C.F.R. § 131.12(a)(1); see 40 C.F.R. § 131.3(e) (defining “existing uses” as “those uses *actually attained* in the water body on or after November 28, 1975, whether or not they are included in the water quality standards”) (emphasis added).) U.S. EPA considers a use to be “actually attained” “when the use has actually occurred *and* the water quality necessary to support the use has been attained” on or after November 28, 1975. (80 Fed. Reg. 51027 (Aug. 21, 2015) (emphasis in original).) As a result, in permit proceedings, beneficial uses that are actually attained must be protected whether or not the beneficial use is designated in the water quality control plan.

Following U.S. EPA’s guidance, and given the historic nature of mercury contamination in many of the state’s surface waters, a Water Board’s determination that a subsistence fishing beneficial use is an “existing use” during a permit proceeding (and prior to designation) would be unlikely in places with legacy mercury pollution, where the water quality to support the use has not been attained on or after November 28, 1975. (See Staff Report, Section 6.4 and 6.4.3-Option 2.) In addition, any consideration of whether a beneficial use (which is not designated in basin plan) applied to a permit action would necessarily occur during a permitting process that requires notice of a hearing and a comment period during which interested parties have an opportunity to comment or provide testimony on such application. (Wat. Code, §§ 13167.5, 13377, 13378; 40 CFR §§ 124.10, 124.11, 124.17.)

Letter: WSPA2 , Pg12, P3	COMMENT	Excerpt: 39	Type: BU/Designation
<p>It [this permit-by-permit system] also places permit holders at a distinct disadvantage and at risk of additional, costly requirements before the water body has even been formally designated. This is especially true when the evidence required before a water body can be designated for one of the new beneficial uses is undefined, and no real criteria exist before such a decision can be made. Therefore, WSPA urges the Board to require amendment of the basin plans prior to any changes to permits are made to incorporate the new water quality objectives associated with the T-SUB, SUB, or CUL beneficial uses.</p>			
<p>Response: Please see Response to Comment WSPA2-38.</p>			
Letter: WSPA2 , Pg12, P4	Choose an item.	Excerpt: 40	Type: Dilution Credits
<p>VII. Elimination of mixing under SIP for non-attainment water bodies</p> <p>A. Industry will suffer a double hit in a reduction of effluent limitations, combined with disallowance of mixing or dilution factors allowed under the SIP</p> <p>WSPA is concerned with what appears to be a severe limitation on dilution credits, and the fact that this limitation appears to be in direct conflict with the Board’s prior decision in Order WQ 2001-06, in which the Board found that a Section 303(d) listing alone was not a sufficient basis on which to conclude that a water body lacks assimilative capacity for an impairing pollutant. (Order WQ 2001-06, p 17).</p> <p>In the Draft Provisions, the Board has expressly disallowed dilution “if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES.” (Draft Provisions, p A-11). This restriction is very similar to the automatic disallowance of dilution credits in the event of a Section 303(d) listing, which was struck down in Order WQ 2001-06. (Order WQ 2001-06, p 17, 20). In that Order, the Board agreed with petitioners that a 303(d)- listing was only suggestive, and not determinative of whether dilution credit was appropriate. (Order WQ 2001-06, p. 20) The Board stated that “[i]n assessing reasonable potential and developing effluent limitations, the Regional Water Board must review the available ambient data and base its determinations on this data.” (Order WQ 2001-06, p 20)</p> <p>The same must be said for the calculation of effluent limitations under the Draft Provisions. That is, the mere fact that the mercury concentration in fish tissue of fish in the receiving water exceeds the applicable objectives, does not eliminate the need for the Regional Water Board to assess water quality conditions, and in particular site-specific ambient data, in determining whether dilution credit is appropriate in the effluent limitation calculation. Given this precedent and prior Board determination, WSPA requests that the Draft Provisions be amended to remove the blanket prohibition on dilution credit contained in IV.D.2.c.2). (Draft Provisions, Pg. A-11)</p>			
<p>Response: Regarding the calculation of effluent limitations, the Provisions (Chapter IV.D.2.c.2) have been modified to allow the consideration of other factors as follows “a dilution credit should be denied if the mercury concentration in fish tissue from fish in the receiving water exceeds</p>			

the applicable MERCURY WATER QUALITY OBJECTIVES and other information indicates a lack of assimilative capacity, including the hydraulics of the water body, potential for bioaccumulation, or other pertinent factors.”			
Letter: WSPA2 , Pg13, P4	Choose an item.	Excerpt: 41	Type: SED/CEQA
VIII. Failure to comply with CEQA			
<p>The Substitute Environmental Document (SED) portion of the Draft Staff Report purports to analyze the environmental impacts resulting from reasonably foreseeable means of compliance, as required by the California Environmental Quality Act (CEQA). Even in a programmatic review of a regulatory action that is intended to benefit the environment, CEQA requires a full and fair evaluation of its potential to result in adverse environmental side-effects. Such disclosure and analysis is necessary to inform the public, as the basis for informed decision-making, and to ensure that adverse impacts are reduced to the extent feasible by mitigation measures or alternatives.</p> <p>In addressing the means of the compliance, the SED refers vaguely to “major facility upgrades” and “additional infrastructure” that will be needed for at least some number of publicly owned and industrial wastewater treatment facilities to comply with effluent limitations that will result from the new objectives. (See, e.g., Draft Staff Report, p. 177). Yet the SED fails to provide any description of the <i>type</i> of “major facility upgrades” that would be necessary.</p>			
Response: Please see Response to Comment WSPA2-9.			
Letter: WSPA2 , Pg13, P4	COMMENT	Excerpt: 42	Type: SED/CEQA
<p>For the 12 ng/L effluent limitations associated with the least stringent new objectives, the SED states that it “is anticipated that major facility upgrades are unnecessary.” (Draft Staff Report, p. 173). However, where major facility upgrades <i>are</i> anticipated to be necessary, to attain the 1 ng/L requirement, no upgrade technology at all is described. (Draft Staff Report, pp. 179-180). Moreover, as noted above and discussed in WSPA’s technical comments, data from the Central Valley Regional Board indicate that tertiary treatment cannot achieve the 4 ng/L limit in all cases. A CEQA document cannot dismiss potentially significant impacts by relying on unsupported and optimistic assumptions.</p>			
Response: Please see Response to Comment WSPA2-9.			
<p>In addition, Chapter 7 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) describes some of the additional compliance methods which are also anticipated to be effective, including institutional controls such as mercury minimization programs, dilution credit programs, and variances if needed. See Sections 7.2.7 through 7.2.10 of the Staff Report. The State Water Board is not required to engage in speculation or conjecture in order to evaluate site-specific and facility-specific technological approaches, which CEQA may otherwise require of those agencies that are responsible for complying with the plan or policy when they determine the manner in which they will comply. (Cal. Code Regs., tit. 14, § 15204, subd. (c)).</p>			

In addition, The Staff Report states “Wastewater treatment plants with tertiary level treatment with nitrification and denitrification likely would meet any of the water column thresholds discussed in this issue (Central Valley Water Board 2010a).” and the facility that the Central Valley Water Board noted did not achieve an effluent limit of 4 ng/L, the “Onondaga County WW”, Central Valley Water Board, 2010, does not include nitrification and denitrification. The Mercury from NPDES Facilities – Final Report (Central Valley Water Board 2010a) in the section describing variability in effluent limits the Central Valley Water Boards staff “Nitrification and denitrification are incorporated in the activated sludge process of the SJ/SC WWTP and tertiary filtration is used as well, while neither is used in the Onondaga County WWTP” (Central Valley Water Board, 2010 pg. 44).” In addition the economic analysis noted that some facilities may need to include pollution prevention (P2) programs “As discussed below, it is anticipated that permittees which must meet more stringent targets, may feasibly do so through a combination of mercury P2 programs and tertiary treatment technologies.”

Letter: WSPA2 , Pg14, P1	COMMENT	Excerpt: 43	Type: SED/CEQA
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Thus, the SED cannot assume that tertiary treatment will always suffice to achieve 4 ng/L, and in any case the SED does not claim – nor could it realistically do so – that tertiary treatment would suffice to achieve 1 ng/L. Yet the SED entirely omits discussion of means of compliance with the most stringent limits, which logically would be the most energy-intensive and would have the greatest environmental side-effects. This does not meet CEQA’s mandate to identify and analyze reasonably foreseeable means of compliance with these objectives.

Response: Please see Responses to Comments WSPA2-9 and 42.

In addition, compliance with the most stringent limits is discussed in Chapters 7 and 8 of the Staff Report. Tertiary treatment, along with additional compliance methodologies such as institutional controls and dilution credits are evaluated. As described, case-by-case evaluation of objectives and compliance schedules will be also conducted by the appropriate Regional Water Boards, allowing additional flexibility in approaches for achieving compliance.

Letter: WSPA2 , Pg14, P2	COMMENT	Excerpt: 44	Type: SED/CEQA
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The SED also relies on there being “relatively few” wastewater/industrial treatment facility upgrades. (See table of impact assessment results for methods of compliance, Draft Staff Report, p. 193). Elsewhere, however, the SED states that it “is too difficult to anticipate how many facilities [sic] might need to upgrade as a result of the Subsistence Fishing Water Quality Objective” but goes on to acknowledge that only “27 percent of facilities statewide are meeting an annual average of 1 ng/L of mercury in their effluent.” (Draft Staff Report, p. 243). CEQA analyses must be based on substantial evidence, but the evidence of the SED itself does not support reliance on the assumption that the magnitude of impacts will be limited to those from “relatively few” facility upgrades.

Response: Please see Responses to Comments WSPA2-9 and 42.

In addition, See tables N-6, N-7 and N-8 (Appendix N pg. 11) that summarizes the number of facilities that currently meet the various proposed water column translators of 12 ng/L, 4 NG/L, and 1 ng/L. The sections of the staff report quoted by the commenter are the summaries of a detailed analysis in Appendix N. In addition, Section 6.13 of the Staff report states:

For the 12 ng/L effluent limitation, recent data from discharger self-monitoring reports indicates that about 8 percent of all discharges to rivers or other flowing waters included in geographic scope of the Provisions exceeded 12 ng/L at least once during 2009 – 2015 (Appendix N). Therefore, of the discharges to rivers or other flowing waters in the geographic scope of the Provisions (about 216 facilities), it is likely that about 8 percent (about 17 facilities) would be issued new requirements for mercury. These facilities would need to monitor their effluent and ensure their discharge meets the effluent limitation. Some of the facilities that exceeded this threshold only exceeded it in one or two samples within the past six years, so they may be able to adapt to the threshold without a major facility upgrade.

For the 4 ng/L effluent limitation, recent data from discharger self-monitoring reports indicates that about 27% of all discharges to waters included in the geographic scope of the Provisions exceeded 4 ng/L, based on 2009 – 2015 data (Appendix N). There are 29 facilities that discharge to estuaries or bays that may include slow moving waters in the geographic scope of the Provisions. Therefore, of facilities that discharge to estuaries/slow moving waters (roughly 29 facilities) in the geographic scope of the Provisions, it is likely that about a third (roughly 10 facilities) would likely need to meet the effluent limitation of 4 ng/L and or make upgrades to the facility. These numbers are illustrative only. Not all bays and estuaries are slow moving waters.

For the 1 ng/L effluent limitation, recent data from discharger self-monitoring reports indicates that about 73% of all discharges to waters included in the geographic scope of the Provisions exceeded 1 ng/L, based on 2009 – 2015 data (Appendix N). This data indicates that there is a good chance that the effluent limitation of 1 ng/L would cause a facility to upgrade. For this effluent limitation to take effect, the applicable beneficial use of Tribal Subsistence Fishing would need to be designated to a slow moving water body through the basin plan amendment process. It is unknown where this use may be designated in the future. The Subsistence Fishing Water Quality Objective, too, could result in effluent limitations of roughly 1 ng/L to 4 ng/L, where the corresponding use might be designated in the future.

For implementing the effluent limitations for either of the two subsistence fishing water quality objectives (1 to 4 ng/L), it may be appropriate for a compliance schedule to be issued with the permit if the resulting effluent limitation would require a major infrastructure upgrade.

Letter: WSPA2 , Pg14, P3	COMMENT	Excerpt: 45	Type: SED/CEQA
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In addition to failing to disclose the nature and extent of necessary facility upgrades, the SED fails to address the reasonably foreseeable environmental impacts of their operation. Instead, the SED’s analysis is almost entirely limited to the impacts of constructing the unspecified upgrades. (See, e.g., Draft Staff Report, p. 190: “Upgrades would involve earth moving, construction activities, and heavy vehicle, equipment use”; see also pp. 202, 219-220). It goes without saying that the upgrades will need to be operated. Indeed, the Draft Staff Report does acknowledge in a single sentence in the greenhouse gas (GHG) section that “[t]he new facility may require more energy to operate, which could contribute more greenhouse gas emissions from the power generation, depending on the source of energy.” (Draft Staff Report, p. 220).

However, having recognized the issue, the SED inexplicably fails to include any further analysis of operational impacts beyond that cursory sentence, and provides *no* analysis of any operational impacts for any issue other than GHG.

Response: Additional analysis has been added to the staff report. Please see new section 7.2.7.

Please see Responses to Comments WSPA2-9, 42, and 44. In addition, see page 220 of the Staff Report. Greenhouse gas levels are not expected to rise significantly since mitigation measures are available to reduce greenhouse gas emissions due to construction, operation, and maintenance activities. As further explained on Page 222 of the Staff Report, the incorporation of BMPs and compliance with any plans, amendments, or regulations adopted for the purpose of reducing greenhouse gas emissions, vehicle use or projects undertaken to comply with the Provisions should reduce the impact on the environment due to greenhouse gas emissions. Section 8.4.7 of the Staff Report provides a detailed evaluation of the environmental impacts and potential mitigation measures the Provisions may have on greenhouse gas emissions.

Letter: WSPA2 , Pg15, P1	COMMENT	Excerpt: 46	Type: SED/CEQA.
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As noted above, information on which to base such analysis is readily available for the types of advanced treatment technologies that would be necessary for such upgrades. The Treatment Technology Report demonstrates that operation of these advanced treatment processes has potentially serious adverse environmental side-effects, including high energy consumption and increased greenhouse gas emissions. (Treatment Technology Report, p ES-2). Operation of advanced treatment technologies increase electrical energy usage at treatment facilities by a factor of 2.3 to 4.1 over baseline secondary treatment operations. (Treatment Technology Report, p. ES-4). Further, operation of MF/RO and electrical power sourcing result in direct and indirect greenhouse gas emission increases of at least 50–100% percent above baseline operations. (Id.) Addition of advanced treatment causes the daily energy demand to rise from a baseline of 10 megawatt hours per day to 22.7 megawatt hours per day for MF/GAC and 39.7 megawatt hours per day for MF/RO. (Treatment Technology Report, p. 35). The addition of MF/GAC causes greenhouse gas emissions to rise from under 3,000 megatons of CO₂ equivalent per year to just under 5,000 megatons of CO₂ equivalent per year and the addition of MF/RO results in an even more dramatic increase to over 7,000 megatons of CO₂ equivalent per year. (Treatment Technology Report, p. 36).

Response: The 2013 Treatment Technology Review and Assessment report (the Assessment), authored by HDR, Incorporated and provided by Commenter contains an error in its initial assumptions, and therefore it over-estimate greenhouse gas emissions for a hypothetical WWTP in the State of Washington and is not appropriate for analysis of POTWs or point-source industrial dischargers in California.

Assumptions used in assumptions for the Assessment’s calculations are listed on the final page of Appendix B in Table B-1, “Greenhouse Gas Emission Assumptions”. Here, HDR, Inc. used values for electricity production from the *Emissions & Generation Resource Integrated Database – eGrid WebVersion 1.0* (U.S. EPA, 2007). HDR, Inc. presented greenhouse gas production rate values for electrical Energy Production (i.e., lbs of greenhouse gas per gigawatt-hour, lbs/GWh, or lbs of greenhouse gas per megawatt-hour, lbs/MWh) that summed to a reported value of 1,336 lb CO₂/MWh, presumably normalized as CO₂ equivalent. However, upon closer investigation of a more recent document generated by U.S. EPA’s eGRID program from 2011, “EGRID2010 Version 1.1 – Year 2007 Summary Tables”¹, multiple errors in the Commenter’s analysis appear.

The value used in the HDR report for “Sum Energy Production” is 1,336 lbs/MWh, but the year for that value is not listed. The EGRID2010

Responses to Comments—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 Mercury Provisions.

document, on page 2 gives a national average output rate of 1,299 lbs/MWh for 2007. Therefore, the Assessment begins with a value 2.8% greater than the national value reported for that year in the later U.S. EPA document.

The HDR report did not present accurate regional data for carbon intensity of electrical generation by using the national average value as a proxy for Washington state. On the same page of the eGRID 2010 report, a chart shows that the EPA divides the United States into distinct regions, reflecting regional divisions of the country's different electrical grids. As visible on the national map on the previously mentioned page, Washington State is clearly in the NWPP (the Northwest eGRID sub-region of the Western Electricity Coordinating Council). The table directly above this map indicates that the total output emission rate is 863.36 lbs/MWh. This value is much lower than the national average for the same year, possibly because Washington State has the most hydroelectric energy use in the United States, while the national average is more biased towards higher carbon emissions due to the prevalence of coal-based electrical generation in older power plants throughout the eastern half of the country. This results in an overestimate of emissions for Washington state by approximately 55%.

Commenter's assertion is further complicated by the fact that the California sub-region (WECC CAMX), which is a nearly independent electrical grid, had a reported emissions rate of 683.53 lbs. CO₂ equivalent/MWh in 2007, which is even lower than the value reported for NWPP area.

Finally, since the publication of the EGRID 2010 document, and after the development of the 2013 Assessment, U.S. EPA has released eGRID2014 (²below). Since 2007, the total carbon dioxide equivalent emission rate for the California sub-region had declined further to 570.5 lb/MWh, an impressive 16% reduction over seven years. This was the second lowest emissions rate in the United States. Estimates presented by Commenter regarding annual tons of CO₂ production are therefore over 200% higher than are appropriate for estimating emissions rates for POTWs in California.

Chapter 7 of the Staff Report describes some of the additional compliance methods which are also anticipated to be effective, including institutional controls such as mercury minimization programs, dilution credit programs, and variances if needed. The State Water Board is not required to engage in speculation or conjecture in order to evaluate site-specific and facility-specific technological approaches, which CEQA may otherwise require of those agencies that are responsible for complying with the plan or policy when they determine the manner in which they will comply. (Cal. Code Regs., tit. 14, § 15204, subd. (c)).

(1) https://www.epa.gov/sites/production/files/2015-02/documents/egrid2010v1_1_year07_summarytables.pdf, Accessed March 8, 2017

(2) https://www.epa.gov/sites/production/files/2017-02/documents/egrid2014_summarytables_v2.pdf, Accessed March 20, 2017

Letter: WSPA2 , Pg15, P2	COMMENT	Excerpt: 47	Type: SED/CEQA.
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Moreover, the Treatment Technology Report assumed that, to minimize the production of brine, treatment facilities should use zero liquid discharge ("ZLD") technology. (Treatment Technology Report, p. at 39.) However, this technology comes at a substantial cost of approximately \$17.50 per gallon per day of ZLD capacity. (Id.) Without the costly ZLD technology, advanced treatment produces a substantial amount of brine. The highly concentrated brine must be properly disposed of to avoid adverse environmental impacts. Unless properly handled, discharges of

<p>brine to the environment can have significant impacts on biota and habitat, as the State Water Board is aware, having convened an expert panel to study “Management of Brine Discharges to Coastal Waters” in 2012. The SED does not evaluate or even mention environmental impacts associated with producing, managing and disposing of brine or other residuals, either as solid waste or potentially hazardous waste, or impacts to biological resources from disposal.</p>			
<p>Response: Staff reviewed the Treatment Technology Report. Despite flaws mentioned in the Report (See Response to Comment WSPA2-46), commenter ignores that the best treatment option discussed for mercury alone is membrane filter/ granulated activated carbon.</p>			
<p>In addition, Please see Responses to Comments WSPA2-9, 42, and 44.</p>			
Letter: WSPA2 , Pg15, P3	Choose an item.	Excerpt: 48	Type: SED/CEQA
<p>Further information is publicly available and could have been considered in the SED from studies of environmental impacts of RO and GAC technologies in other contexts, such as desalination plants and remediation projects. See, e.g., Tularam and Ilahee, Environmental concerns of desalinating seawater (2007); and He, A Calculation of the Environmental Footprint of a Granular Activated Carbon Regeneration Facility (2012) (both attached to these comments for incorporation in the record). While some impacts and aspects of such applications of the technology may not be relevant here, the SED did not even consider any information on such environmental impacts of reasonably foreseeable means of compliance with the 1 ng/L limit or the 4 ng/L limit. As such, the SED fails as a CEQA informational document.</p>			
<p>Response: Please see Responses to Comments WSPA2-9, 42, and 44.</p>			
Letter: WSPA2 , Pg16, P1Y	COMMENT	Excerpt: 49	Type: SED/CEQA
<p>Without adequately evaluating the environmental impacts of treatment facility upgrades, the SED fails to fulfill the basic requirements for a CEQA document. The fact that the specific choice of technologies that individual POTWs and industrial dischargers may implement is uncertain at this stage does not mean that the need to implement some technology is speculative.</p>			
<p>Response: Please see Responses to Comments WSPA2-9, 42, and 44.</p>			
<p>In addition, As described in the Staff Report, “Recent data from discharger self-monitoring reports indicate that about 8 percent of all discharges to waters included in geographic scope of the Provisions exceeded the 12 ng/L threshold at least once during 2009 – 2015 (Appendix N). Some of the facilities that exceeded this threshold only exceeded it in one or two years within the past six years, and met the effluent limitations in other years. Therefore, it is anticipated that these facilities would be able to adapt to the effluent limitation without a major facility upgrade” (Staff Report, Chapter 7.2.7 pg. 174.) Also see appendix N for a detailed analysis of current performance of dischargers subject to the provisions.</p>			
Letter: WSPA2 , Pg16, P1	COMMENT	Excerpt: 50	Type: SED/CEQA
<p>Even in a programmatic analysis, environmental consequences of adopting the Draft Provisions that are reasonably foreseeable at the time of their adoption are ripe for CEQA review and cannot be deferred further to the future project level.</p>			
<p>Response: Please see Responses to Comments WSPA2-9, 42, 44, and 49.</p>			

Letter: WSPA2 , Pg16, P1	COMMENT	Excerpt: 51	Type: SED/CEQA
<p>The Draft Provisions constitute a commitment to implementation which must be carried out. Since they will be mandatory, other alternatives that could avoid or reduce such impacts will be rendered legally infeasible and precluded from consideration in future project level CEQA reviews. Since the addition of this information will necessarily reveal new or more severe environmental impacts from the operation of facility upgrades than those now discussed in the SED, the SED must be revised and recirculated to allow additional comment on such impacts.</p>			
<p>Response: Please see responses to WSPA2-41, 42, and 49. Additionally, recirculation of the environmental document is required when “new significant information” is added to the Staff Report after public notice of the Staff Report. Although the Staff Report has been revised after public notice was provided, the revisions do not amount to “significant new information” as defined by California Code of Regulations, title 14, section 15088.5, and recirculation of the revised Staff Report is not required.</p>			
Letter: WSPA2 , Pg17, P1	NOT COMMENT	Excerpt: 52	Type: Summary
<p>[The following comments were prepared for Western States Petroleum Association by Susan Paulsen, Ph.D., from Exponent.]</p> <p>This technical memorandum summarizes Exponent’s comments on the State Water Resources Control Board’s (Board’s) proposed “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 Mercury Provisions” (Mercury Provisions), which was released for public review on January 3, 2017.¹ Our comments fall into seven categories that may be summarized as follows:</p> <ol style="list-style-type: none"> 1. Point source discharges subject to individual NPDES permits (e.g., industrial discharges) are small relative to other mercury sources; imposing stringent numeric effluent limitations will have little or no discernible effect on mercury concentrations in fish and the environment. 2. The proposed effluent limitations for non-stormwater individual NPDES dischargers may not be attainable (especially 1 ng/L). 3. Consistent with Board precedent, dilution credits and mixing zones should be allowed, if warranted by site-specific conditions, for NPDES discharges containing mercury. 4. Unless significant changes are made to the Mercury Provisions, the State Board should also implement a variance policy because, in many cases, the proposed water quality objectives will be unattainable. 5. Mercury concentrations in many of the state’s water bodies have exceeded the proposed objectives for decades or longer. As such, certain beneficial uses are not existing uses as defined by the Clean Water Act. The proposed Mercury Provisions should be modified to provide guidance regarding implementation measures and time schedules for “goal uses.” 			

Responses to Comments—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 Mercury Provisions.

6. The proposed fish tissue objectives for the protection of human health and wildlife are likely too conservative, and the proposed water column targets are flawed. Neither the objectives nor the targets should be adopted at this time.

7. The implementation program in the State’s proposed policy should be modified to focus on implementation actions that will lead to reductions in mercury in the state’s waters and fish.

A detailed explanation of these comments is included below.

Response: Comment noted.

Letter: WSPA2 , Pg18, P1	COMMENT	Excerpt: 53	Type: Too Stringent
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1. Point source discharges subject to individual NPDES permits (e.g., industrial discharges) are small relative to other mercury source, imposing stringent numeric effluent limitations will have little or no discernible effect on mercury concentrations in fish and the environment.

In Appendix N of the Mercury Provisions, the Board presents source analysis data for the 14 existing mercury-related TMDLs in the state. (2) Only three of the mercury TMDLs for these water bodies list wastewater and industrial discharges as sources of mercury, and only two of them (for the Delta and San Francisco Bay) include a quantitative source analysis. (3) Appendix N indicates that wastewater and industrial discharges constitute 4% of methylmercury discharged to the Delta and 1.5% of total mercury discharged to San Francisco Bay. (4) Sources related to historical mining (tributaries and water body sediments) account for 93% and 82% of mercury in the Delta and San Francisco Bay, respectively, while atmospheric deposition (direct deposition and urban stormwater generated by mercury-laden precipitation) accounts for 15% of mercury in San Francisco Bay.

(2) Appendix N. Wastewater and Industrial Discharges. Pp. N-14 to N-15. Note that Figure 3-1 (p. 33) of the Staff Report shows a map of mercury impaired waters on the 2012 303(d) list, which includes many more water bodies than those for which mercury TMDLs have already been developed.

(3) Appendix N, p. N-14

(4) Appendix N, p. N-15

Response: The commenter incorrectly conflates the requirements of a TMDL with the function of a water quality objective. TMDLs are designed to identify all dischargers into an impaired waterbody, to quantify the loads and to assign load reduction in order to meet a water quality standard, including taking into account natural sources and a margin of safety. There is no requirement to do the same when developing a water quality objective. The information in the Staff Report on existing mercury TMDLs was used to illustrate control programs that have already been adopted for impaired waters. The San Francisco Bay and the Delta were particularly impacted by the mercury mining and the gold mining in the Coast Ranges and the gold fields in the Sierra Nevada mountains. Many parts of California are not impacted by such large legacy

loads. In those places, point source dischargers may be a significant load. Appendix N.2.1 states “From the estimates in Table N-11, atmospheric deposition is not a major source of mercury. In the Sacramento-San Joaquin Delta TMDL, municipal wastewater is more significant than atmospheric deposition. If this information is used to extrapolate relative source contribution to the state as a whole, then for any watershed without historic gold or mercury mining, wastewater and industrial dischargers can be a significant source of mercury.”

The information on existing mercury listed-waters does include those for which a TMDL is not yet developed. Nothing in these provisions necessarily exempts the Water Boards from developing future mercury TMDLs for the impaired waters. When those TMDLs are developed watershed specific implementation programs will be developed which may supersede all or part of the Provisions. At such time site-specific objectives, compliance schedules, and assigned loads will be applicable to the water.

Letter: WSPA2 , Pg18, P2	COMMENT	Excerpt: 54	Type: Too Stringent
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The Staff Report indicates that historical mining, natural soils, and direct deposition are “significant” and “major” sources of mercury.⁵ The Staff Report notes that “the median and average mercury concentrations in rain in California were 6 ng/L and 12 ng/L” and “the 99.8th percentile of mercury concentrations in rain in the United States was 174 ng/L.” (6,7) Thus, a significant fraction of rain samples in California would have concentrations higher than the proposed effluent limitations (explained below) for point source discharges. The Staff Report also indicates that “[m]ercury deposition from atmospheric emissions is thought to be the major source of mercury in some Southern California lakes and reservoirs (U.S. EPA 2012, Tetra Tech 2008).” (8) Finally, the Staff Report states, “[m]unicipal wastewater treatment plants are generally a relatively minor source of mercury to the environment compared to other sources. Wastewater treatment plants already remove most of the mercury from the effluent.” (9)

Thus, data from the Mercury Provisions indicate that wastewater and industrial NPDES dischargers contribute little mercury to affected water bodies relative to other sources, suggesting that tight limitations on mercury from point sources will not result in significant reductions in environmental mercury concentrations.

Response: While the Staff Report section 4.5.1 shows that there is a range of mercury concentrations in rain the level of mercury in surface waters and while the background levels of mercury in some of California’s waters are elevated the concentration of mercury in surface water is lower than the water column targets (See table 4-1). “The average total mercury concentration in surface waters from 2004 to 2012 was 4.7 ng/L” and the median was 2.0 ng/L total mercury (Pg. 152) The information in the Staff Report supports that wastewater treatment plants can reliably meet the 12 ng/L limit using current technology. The staff report in Appendix N, Table N-6 shows that for all POTWs for which there is mercury data only 3% are exceeding an average of 12 ng/L of mercury and if all point source discharges are included then 12% would exceed and average of 12 ng/L. This analysis did not take into account the ability to include missing zones which could make the percentage of dischargers not meeting 12 ng/L even lower. The bioaccumulation studies, both the national data as well as the California data indicate a water column concentration greater than 12 could lead, in itself, to fish tissue exceedances. Appendix I has an extensive discussion on the derivation of water column targets designed to meet the fish tissue objectives and summarizes the studies and recommendation on Pg. I-13, “Using both California and U.S. EPA BAFs, the water column target based on rivers and streams would be 0.3 ng/L total methylmercury or 12 ng/L total

<p>mercury (Table I-4 and Section I.3). Since most discharges flow into rivers, streams or creeks, this would be the water column target applicable for most discharges. Discharges to lakes and reservoirs would almost entirely be addressed by a separate project, but could be calculated on a case-by case basis until the project is adopted. For slow moving waters, such as a bay or estuary that has slow moving water or a marsh, then a different water column translation would be needed. Site-specific information or the water column target from the combined U.S. EPA BAF (0.1 ng/L total methylmercury, or 4 ng/L total mercury) would be used for such situations. The advantage of this option is that most dischargers are not subject to requirements that may be over stringent, since most discharges flow into rivers, stream, or creeks. The other advantage is that the water column target for rivers, which would be most widely used, is well supported by both national and California data.” The provisions allow a broad suite of actions for determining site specific water column translators for determining effluent limits using a linear regression analysis or other peer reviewed model. Finally the provisions have been modified to clarify when it would be appropriate to use the assumptions of an existing TMDL to derive waste load allocations when new beneficial uses are designated and when a new TMDL could be developed. See Section D.2.C.II</p>			
Letter: WSPA2 , Pg18, P3	NOT COMMENT	Excerpt: 55	Type: Restatement
<p>(5) The Staff Report notes that “elevated mercury concentrations in present-day mine impacted waters and sediments indicate that hundreds to thousands of pounds of mercury remain at each of the many sites affected by hydraulic mining.” (Staff Report at p. 47) The Staff Report also notes, “The Coast Ranges are naturally high in mercury... The soils in these areas that are naturally enriched with mercury erode, contributing to the mercury load in waterways... The mercury from mine waste, naturally enriched soils, and geothermal springs is a major source of mercury in the Coast Ranges, the Sierra Nevada Mountains, and also downstream in the Sacramento/San Joaquin Delta and San Francisco Bay.” (Staff Report at p. 49) And finally, the Staff Report finds that “direct deposition of mercury to water bodies (vs. deposition on land upstream) has been found to be very important in determining mercury levels in fish. Harris and colleagues applied isotopically labeled mercury (as HgNO3) to a lake and the surrounding watershed. Essentially all of the increase in methylmercury in fish after 3 years was due to the mercury deposited directly to the lake surface... Furthermore, the results could suggest that controlling emissions that are deposited directly on the water surface may have a rapid effect (few years) on mercury level in fish (Harris et al. 2007).” (Staff Report at p. 50)</p>			
<p>Response: Comment noted.</p>			
Letter: WSPA2 , Pg19, P1	COMMENT	Excerpt: 56	Type: Economics
<p>Further, the costs of imposing these requirements on industrial dischargers are not considered, nor are the “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area,” as required by Section 13241 of the California Water Code.</p>			
<p>Response: The potential costs to industrial facilities are considered in the Economic Analysis, Appendix R of the Staff Report. See page 52 and Exhibit 18 of Appendix R for a discussion of the potential costs to industrial facilities. Chapter 4.4 of the Staff Report discusses the various sources of mercury and Chapter 7.2 considers and discusses the water quality conditions,</p>			

related to mercury that could reasonably be achieved through the coordinated control of all factors that affect water quality.			
Letter: WSPA2 , Pg19, P2	Choose an item.	Excerpt: 57	Type: Attainability
<p>2. The proposed effluent limitations for non-stormwater individual NPDES dischargers may not be attainable (especially 1 ng/L).</p> <p>As discussed in Section 2 of the Staff Report, the proposed water quality objectives for mercury are expressed as fish tissue concentrations. These fish tissue concentrations are “translated” into water column concentrations that are proposed to be used to evaluate “reasonable potential” and to derive effluent limitations applicable to point source discharges. The water column concentrations and their proposed applicability to various WQOs and kinds of water bodies are summarized in Table 2.</p> <p>The Staff Report asserts that the proposed 12 ng/L effluent limitation “is achievable” with existing secondary wastewater treatment technology and (possibly) a mercury source control/minimization program. (10) However, according to a recent study by HDR, typical mercury concentrations after secondary treatment range from 10 to 50 ng/L in industrial discharges. (11) The report does not examine the factors responsible for the variability in mercury concentrations in treated industrial effluent, though it likely depends in part on influent mercury concentrations. HDR’s data suggest that some NPDES dischargers will <i>not</i> be able to meet the 12 ng/L effluent limitation with secondary treatment and/or a source control/minimization program.</p> <p>[For Table 1, see original letter, page 20.]</p> <p>Response: The Staff Report and the Economics Analysis acknowledge that not all secondary dischargers meet 12 ng/L currently and may have to upgrade to tertiary treatment. There is insufficient information to account for the variability in the concentration on mercury in industrial dischargers. As noted by the commenter it is likely due, at least in part, to influent concentrations. In addition, please see Appendix N.</p>			
Letter: WSPA2 , Pg20, P2	COMMENT	Excerpt: 58	Type: Attainability
<p>The Staff Report also asserts that the proposed 4 ng/L effluent limitation is achievable with tertiary treatment that includes nitrification/denitrification, but not with secondary treatment.¹² Data from the Central Valley Regional Board indicate that tertiary wastewater treatment can reduce mercury concentrations to 4 ng/L or below in at least some cases, but not in every case. For example, on average the San Jose/Santa Clara WWTP achieves a mercury concentration of 4 ng/L limitation using tertiary treatment, (13) while the Onondaga County WWTP does not. (14) Thus, it is likely that some dischargers already employing tertiary treatment will not be able to meet the 4 ng/L water column concentration.</p> <p>(13) Central Valley Water Board, 2010. A review of methylmercury and inorganic mercury discharges from NPDES facilities in California’s Central Valley Staff Report Final. March 2010. Rancho Cordova, CA. Table 2, p. 57.</p> <p>(14) Central Valley Water Board, 2010. Table 5, p. 58.</p>			

<p>Response: The Staff Report states “Wastewater treatment plants with tertiary level treatment with nitrification and denitrification likely would meet any of the water column thresholds discussed in this issue (Central Valley Water Board 2010a).” and the facility, the “Onondaga County WW” the commenter noted, from the reference cited, Central Valley Water Board, 2010, does not include nitrification and denitrification. The Mercury from NPDES Facilities – Final Report (Central Valley Water Board 2010a) in the section describing variability in effluent limits the Central Valley Water Boards staff “Nitrification and denitrification are incorporated in the activated sludge process of the SJ/SC WWTP and tertiary filtration is used as well, while neither is used in the Onondaga County WWTP” (Central Valley Water Board, 2010 pg. 44).” In addition the economic analysis noted that some facilities may need to include pollution prevention (P2) programs “As discussed below, it is anticipated that permittees which must meet more stringent targets, may feasibly do so through a combination of mercury P2 programs and tertiary treatment technologies.”</p>			
Letter: WSPA2 , Pg20, P3	COMMENT	Excerpt: 59	Type: Attainability
<p>In contrast with the 12 ng/L and 4 ng/L effluent limitations, the 1 ng/L effluent limitation proposed for slow-moving water bodies with a Tribal Subsistence Fishing designation is likely to be unachievable without extraordinary treatment upgrades and expenditures for most NPDES dischargers.</p>			
<p>Response: Please see Response to Comment WSPA2-48.</p> <p>Additionally, as noted in the Staff Report on page 155, “About 7 percent of discharges within the geographic scope of the Provisions flow into water bodies that are estuaries, sloughs, or wetlands, while 10 percent of discharges are to bays (Appendix N). Slower moving waters may experience higher rates of mercury methylation and bioaccumulation. For estuaries, there are no established BAFs. Some estuaries may experience flushing and the translation for the rivers BAF may be the most appropriate value to use. On the other hand, some estuaries may be enclosed and more stagnant, and the U.S. EPA BAFs for lakes may be more appropriate. Due to the uncertainties surrounding an appropriate number for estuaries, the draft national BAF that combined lakes and rivers data was used to derive a water column translation for slow-flowing estuaries and bays (Appendix I), and the resulting effluent limitation is 4 ng/L. These receiving waters were classified as “slow moving water bodies” in the Provisions for permitting. Professional judgment of the permit writer and site-specific information is needed to asses if the receiving water type would best be categorized as “slow moving” or “flowing” as listed in Table 1 as described here.</p>			
Letter: WSPA2 , Pg20, P3	COMMENT	Excerpt: 60	Type: Attainability
<p>The treatment processes that would be needed to meet a concentration limit of 1 ng/L are not disclosed in the Staff Report. The Staff Report indicates that the 1 ng/L effluent limitation may be unachievable for NPDES dischargers not already achieving it (i.e., 73% of such dischargers according to Board data). (15) The Staff Report suggests no treatment methods for NPDES dischargers to meet the 1 ng/L effluent limitation. Instead, the Staff Report states, “the Water Boards may use compliance schedules, site-specific objectives (with extended compliance schedules), TMDLs, or variances if the [1 ng/L] effluent limitation is unachievable.” (16)</p> <p>(15) Staff Report at p. 180: “Based on statewide monitoring data for all facilities that may be impacted by the Provisions, it is estimated that</p>			

<p>eight facilities would not meet the new effluent limits for the [T-SUB] water quality objective in flowing water bodies and will have to undergo a major treatment plant upgrade if they are designated with the T-SUB beneficial use in the future.” And from the Staff Report at p. 182: “Recent data from discharger self-monitoring reports indicates [sic] that about 73 percent of all discharges to waters include in the geographic scope of the Provisions exceeded 1 ng/L, based on 2009-2015 data.” (16) Staff Report at p. 183.</p>			
<p>Response: Please see Response to Comment WSPA2-48.</p>			
Letter: WSPA2 , Pg21, P1	COMMENT	Excerpt: 61	Type: Attainability
<p>HDR’s review of treatment technologies states, “[t]here is limited information available about achieving ultralow effluent mercury concentrations near the 5 ng/L range.” (17) The treatment process that appears most likely to be able to meet the proposed 1 ng/L effluent limitation is advanced treatment employing microfiltration and reverse osmosis (MF/RO), and then only under optimal conditions where input concentrations are low. (18)</p> <p>(17) HDR, 2013, p. 12. (18) HDR, 2013, p. 13.</p>			
<p>Response: The Staff Report shows that, using current treatment process approximately 75% of POTWs and 50% of industrial facilities would currently meet an effluent limit based on 4 ng/L (see Appendix N). The Staff Report and the economic analysis acknowledges that meeting an effluent limit of 1 ng/L would be difficult using current technology. However, at this time no waters are designated for T-SUB or SUB that would require the imposition of such limits. At the time slow moving waters are designated, the Water Boards may include site specific objectives, which is the clear preference in the Provisions, and may include compliance schedules or variance.” Additionally, the provisions allow a broad suite of actions for determine site specific water column translators for determining effluent limits using a linear regression analysis or other peer reviewed model. Finally the provisions have been modified to clarify when it would be appropriate to use the assumptions of an existing TMDL to derive waste load allocations when new beneficial uses are designated and when a new TMDL could be developed which could alleviate the need to set point source limits based on 1 ng/L. See Section D.2.C.II</p>			
Letter: WSPA2 , Pg21, P1	COMMENT	Excerpt: 62	Type: Attainability
<p>Under these circumstances, HDR found that dischargers could achieve mercury effluent concentration in the range of 1.2 to 3 ng/L. (19) However, this level of treatment and the associated substantial additional expenditures are not disclosed or examined in the Staff Report.</p>			
<p>Response: Under current and foreseeable future conditions the majority of facilities would not need to meet an effluent limit less than 4 ng/L and most would need to meet a limit based on 12 ng/L. Since the beneficial uses that could, in slow moving water bodies, require a limit less than 4 ng/L have not been designated it was not possible to do a detailed analysis. However, the Staff Report does acknowledge that compliance schedules, variances, or other tools would be needed should such water column translators be used in the future. See Response to comment WSPA2-24 regarding the disclosure and examination of “substantial additional expenditures” in the Staff Report.</p>			
Letter: WSPA2 , Pg21, P2	COMMENT	Excerpt: 63	Type: Economics
<p>Appendix R of the Staff Report estimates the cost of upgrades from secondary to tertiary wastewater treatment that would be required by the</p>			

policy to be in the range of \$9–15 million/year over 20 years. Exponent believes this range significantly underestimates upgrade costs. For example, Sacramento Regional San—a POTW with a design flow rate of 181 million gallons per day (mgd)—is currently upgrading from secondary to tertiary treatment at a capital cost of approximately \$2 billion and \$50 million/year in operation and maintenance (O&M) thereafter. (20) These estimates for a single plant surpass the Appendix R total estimate for all plant upgrades in the state.

(19) HDR, 2013, pp. 13-14

(20) Data accessed February 8, 2017, from <http://www.regionalsan.com/echowater-project>.

Response: As noted in the comment, the Sacramento Regional Waste Water Treatment Plant (WWTP) is permitted to discharge up to 181 million gallons per day (MGD). Given the facility’s large size, it is not a good model to use to estimate costs for upgrades to other facilities. In addition, the costs for upgrading the Sacramento Regional WWTP itself should not be included in the costs for upgrading from secondary to tertiary treatment because the Sacramento Regional WWTP is constructing the upgrades and will complete that project with or without the requirements in the Provisions.

A review of permitted waste water treatment facilities in California shows that there are fourteen facilities in California, including the Sacramento Regional WWTP, that are permitted to discharge 50 MGD or greater into inland surface waters, enclosed bays, or estuaries. As mentioned, the Sacramento Regional WWTP is currently in the process of upgrading to tertiary treatment. Eight of the other facilities that are permitted to discharge 50 MGD or greater have already upgraded their facilities to tertiary treatment. The remaining five facilities discharge into waters covered by the San Francisco Bay TMDL. Since the Provisions will not supersede existing TMDLs and the TMDL specifies the mercury loads for dischargers the Provisions will not require these facilities to upgrade to tertiary treatment. Therefore, no large facilities that are comparable to the Sacramento Regional WWTP would be required to upgrade to tertiary treatment to meet the effluent limits in the Provisions. The Economic Analysis (Appendix R of the Staff Report) includes an analysis of all facilities that currently have secondary treatment and may upgrade to tertiary treatment to meet the effluent limits in the Provisions.

Letter: WSPA2 , Pg21, P3	COMMENT	Excerpt: 64	Type: Economics
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Given advanced treatment (e.g., MF/RO) will be necessary to achieve the 1 ng/L limitation, costs will be far higher. HDR suggests that the capital cost of upgrading a plant from secondary to advanced treatment (MF/RO) would be about \$15–\$162 per gallon per day (gpd) of treatment capacity, depending on the size of the plant to be upgraded, (21) or one to two order of magnitude higher than the Appendix R estimate of \$1.14 per gpd to upgrade to tertiary treatment. (22) Clearly, the costs required to upgrade a treatment plant to advanced treatment will exceed the costs to upgrade to tertiary treatment, such that the costs of implementing the SWRCB’s proposal will be far greater than disclosed in the Staff Report.

Response: As noted in the Provisions, an effluent limit of 1 ng/L would only be required for dischargers into slow moving waters that are designated with the T-SUB beneficial use. Since no waters are currently designated with the T-SUB beneficial use, an effluent limit of 1 ng/L will not apply to any waters upon adoption of the Provisions. Table N-3a in Appendix N of the Staff Report shows that only seven percent of

wastewater and industrial discharges are into waters such as estuaries, sloughs, wetlands, tidal prisms, ponds, and marshes, waters that are likely to be designated by the Permitting Authority as “slow-moving” waters. Therefore only a small portion of dischargers may be subject to an effluent limit at some point in the future. In addition, if in the future any slow moving waters are designated with either a T-SUB or SUB beneficial use the dischargers have a variety of options to set appropriate effluent limits. Options include site-specific objectives, site-specific bioaccumulation factors, and dilution credits. The Provisions has also been modified to allow Regional Water Boards the discretion to conduct a load assessment to assign appropriate effluent limits, even without a TMDL. If, in the future any facilities do need to meet an effluent limit of 1 ng/L the Permitting Authority may approve a compliance schedule or a variance to allow the facility to find cost effective methods to meet the effluent limit.			
Letter: WSPA2 , Pg22, P1	COMMENT	Excerpt: 65	Type: Economics
Although the Staff Report presents some analysis of anticipated costs for wastewater treatment plants, the Staff Report does not appear to include any discussion of the control measures or costs that may be required for industrial facilities with individual permits to meet the proposed effluent limitations. (23) (23) Staff Report Appendix R, R-23.			
Response: A thorough discussion of the treatment options and costs for wastewater treatment plants is included in the Economic Analysis, Appendix R of the Staff Report. See pages 42 through 48 of Appendix R and Exhibits 15 and 16 of Appendix R.			
Letter: WSPA2 , Pg22, P1	COMMENT	Excerpt: 66	Type: Economics
For facilities regulated under the industrial general permit (IGP), the Staff Report states that existing control measures may not be sufficient to meet the proposed revised Numeric Action Limits (NALs) (24) but does not analyze the treatment processes that could be employed to meet the NALs, and does not discuss the associated costs. (24) Appendix R, R-40.			
Response: The proposed NAL is not an effluent limit, water quality objective, or receiving water limit and exceedance of the NAL is not in and of itself a permit violation. The existing control measures at some industrial stormwater facilities may not be enough to meet the NAL therefore requiring additional control measures or changes to existing control measure (i.e. sweeping 2 times/day instead of 1 time). If the NAL is exceeded, dischargers are then required to perform Exceedance Response Actions (ERAs) which allow for options. A discharger can make a claim (with supporting evidence) that the pollutant is from a non-industrial source, natural background, or they can make the claim that they are implementing the Best Available Technology Economically Achievable (BAT) for the mercury in their stormwater discharges.			
Letter: WSPA2 , Pg22, P2	COMMENT	Excerpt: 67	Type: Dilution Credits
3. Consistent with Board precedent, dilution credits and mixing zones should be allowed, if warranted by site-specific conditions, for NPDES discharges containing mercury.			
The draft Staff Report states in parts that the Regional Boards have discretion to grant dilution credits and/or mixing zones in NPDES permits for discharges containing mercury. For example, the Staff Report states, “Water Boards have the discretion to allow dilution credits where			

appropriate.” (25) The Staff Report discusses the permissibility of dilution credits most frequently when acknowledging the difficulty that NPDES dischargers may have attaining proposed mercury effluent limitations. For example, in discussing the difficulty of meeting the proposed 1 ng/L effluent limitation for mercury-containing discharges to slow-moving waters designated as supporting the Tribal Subsistence Fishing beneficial use (T-SUB), the Staff Report states, “However, if the Water Board exercises its discretion to allow dilution credits, the objective would be much more achievable.” (26)

However, at other points the Staff Report indicates that dilution credits will not be allowed under most circumstances. The Staff Report indicates that dilution credits will not be allowed for water bodies that are included on the list of impaired waters (303(d) list) for mercury.(27)

Response: Dilution credits are available where the receiving water still has assimilative capacity with the objective, however if a waterbody is on the list of impaired waters, it would be indicative that it no longer has assimilative capacity for that mercury objective, and under such circumstance, dilution credit would not be available because there would no longer be assimilative capacity, but this decision would need to be based on site-specific fish tissue data of the applicable receiving water. The Staff Report is simply identifying all the situations that may apply, those when dilution credit may be available and be granted and those when it is not available and can’t be granted, and the discretion that the Regional Boards have to consider dilution. In addition, the Provisions (Chapter IV.D.1) specifies that the implementation provisions including calculation of effluent limits do not apply to discharges that discharge to receiving waters for which a mercury of methylmercury TMDL is already established for the same beneficial use or water quality objective under evaluation, which could also apply to waterbodies that are in the 303(d) list. Also, Please see Response to Comment WSPA2-40

Letter: WSPA2 , Pg22, P3	COMMENT	Excerpt: 68	Type: Dilution Credits
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SWRCB Staff also indicated at the January 9th, 2017, workshop that dilution credits and mixing zones would not be allowed in NPDES permits for water bodies that are impaired for mercury. The Staff Report also indicates that the following language would be included in Chapter IV of the ISWEBE Plan (the Implementation Chapter): “Dilution shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES.” (28) Presumably, this prohibition would apply regardless of whether a water body is on the 303(d) list of impaired waters for mercury.

(25) Staff Report, p. 10.

(26) Staff Report, p. 180. See also a similar statement on p. 182.

(27) “...the Water Boards have the discretion to allow dilution credits *in waters that currently meet the applicable water quality standards...*” (at p. 174) and “if the Water Boards exercise discretion to allow dilution credits *in waters achieving the applicable water quality standard(s)*, the effluent limitations would be much more achievable” (at p. 177) (emphasis added).

(28) Staff Report at p. 304; capitals in original.

Response: The Provisions (Chapter IV.D.2.c.2) specifies that dilution credits are prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable fish tissue mercury water quality objective, and does not automatically prohibit dilution if a waterbody is in the 303(d) list. However, if a waterbody where a facility discharges is on the 303(d) list, then this means that there could be site-

specific data that indicates the fish tissue mercury objective is exceeded and thus the prohibition would apply. Now on the other hand, if a waterbody where a facility discharges is not on the 303(d) list then site-specific data would be needed to determine if the water quality objective is exceeded or not and based on the results, dilution can be granted or prohibited. This decision would be left to the discretion of the Regional Board upon obtaining site-specific data on fish tissue. Therefore, the prohibition does not just apply regardless whether a waterbody is on the 303(d) list or not. The prohibition applies based on site-specific data that demonstrates the mercury fish tissue objective is exceeded. In addition, waterbodies that are on the 303(d) list may also have a TMDL in place for the same beneficial use or water quality objective under evaluation, and if so, the proposed mercury Provisions would not apply and instead, discharges into those waterbodies would need to comply with the adopted TMDL requirements.

Letter: WSPA2 , Pg23, P1	COMMENT	Excerpt: 69	Type: Dilution Credits
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The Board’s position that dilution credits will not be allowed in water bodies that are impaired for mercury appears to contradict precedential Board Orders, including Order 2001-06. The Board issued Order 2001-06 after its review of petitions filed regarding two NPDES permits issued by the San Francisco Bay Regional Water Quality Control Board (SF Board). The permits regulated industrial discharges from two refineries that discharge to Suisun Bay and San Pablo Bay, on either side of the Carquinez Strait. In the initial NPDES permits, the SF Board did not allow mixing zones or dilution credits when it calculated effluent limitations for the discharges, asserting that since both Suisun Bay and San Pablo Bay were on the 303(d) list for several bioaccumulative toxic pollutants, the receiving waters did not have assimilative capacity for those pollutants, and thus dilution credits should not be allowed in the calculation of effluent limitations.

However, upon review the State Board found that, in fact, dilution credits should be allowed in these cases. The Board’s decision was based, in part, on a study by Flow Science Incorporated (Flow Science) that demonstrated the large amounts of dilution available in the receiving waters due to the large daily tidal flows into and out of the Delta via Carquinez Strait. (29) Flow Science concluded that tidal flushing in this region of the Bay-Delta system is substantial, (30) and that far-field long-term average dilution of discharges at these locations was roughly 3,000:1. Flow Science also concluded that “[e]ven for the bioaccumulative pollutants of dioxin, PCBs, 4,4- DDE, and dieldrin, there is no evidence that indicates that discharges from the [refinery] diffuser are in any way responsible for elevated concentrations in receiving waters, sediments, or biota. Similarly, there is no evidence ... that enforcing the effluent limits proposed in the tentative order for these constituents would result in any discernible decrease in concentrations of these constituents in receiving waters, sediments, or biota. Any decision to set effluent limits of these constituents as proposed in the tentative order cannot be justified on scientific mass balance principles... these arguments also lead to the conclusion that there is no scientific reason for denying a dilution credit for these pollutants.”

Following its review, the State Board remanded the two permits to the SF Board for appropriate revision. The summary for Order 2001-06 states that “A Regional Water Quality Control Board (Regional Water Board) cannot rely solely on a Section 303(d) listing as the basis for concluding that a receiving water lacks assimilative capacity for an impairing pollutant. Rather, the Regional Water Board must base assimilative capacity determinations on the relevant water quality-related data.” (31) As the information supporting Order 2001-06 suggests, relevant water quality-related data include the dilution available for the discharge, whether the discharge makes a significant contribution of pollutants to the receiving water relative to other sources (e.g., non-point sources), and whether or not effluent limitations would affect concentrations in the receiving

water, sediments, or biota in a significant way.

Given precedential Order 2001-06, the Board may not rely solely on a Section 303(d) listing to determine assimilative capacity and the permissibility of a dilution credit. The proposed Mercury Provisions should be revised to require the consideration of site-specific information and to allow dilution credits in cases where a discharge is minor relative to other sources, and where effluent limitations would not have a significant effect on receiving water, sediment, or fish tissue concentrations.

(29) Flow Science (2001). Comments on proposed tentative order renewing NPDES Permit CA0005789 NPDES SUPPORT PERMIT CA0005789 CONTRACT NO. RB 0101-12. Letter from Susan C. Paulsen to Kevin Buchan, Western States Petroleum Association. October 31.

(30) Although these discharges are to an estuary/enclosed bay system, the receiving water at the discharge locations is not “slow moving” and significant dilution is available. The State Board should provide additional guidance regarding the site-specific assessment of whether a discharge is to a “slow moving” or “flowing” water body.

(31) Summary for Board water quality Order 2001-06, accessed February 9, 2017, at http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/wqo01.shtml.

Response: Please see Response to Comment WSPA2-40.

Letter: WSPA2 , Pg24, P2	COMMENT	Excerpt: 70	Type: Variance Policy
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4. Unless significant changes are made to the Mercury Provisions, the State Board should also implement a variance policy because, in many cases, the proposed water quality objectives will be unattainable.

On August 21, 2015, U.S. EPA published water quality standards regulation (80 FR 51010), which includes water quality standards variances (40 CFR § 131.14). This regulation authorizes states to implement variances in cases where the highest attainable condition of the receiving water does not meet the applicable water quality standard. In such cases, the variance becomes the water quality standard used by permitting authorities in generating effluent limitations for discharges regulated by NPDES permits.

Given that the proposed Mercury Provisions, as currently written, require mercury effluent limitations that are likely unattainable for certain dischargers and water bodies (see below), the use of variances by Regional Boards is necessary to prevent chronic violation of permit terms and inordinate penalties associated with such violation. Although the State Water Board has proposed a statewide Variance Policy in association with its adoption of water quality standards for bacteria, there is currently no established statewide mechanism for water quality standards variances; only the Central Valley Regional Board has adopted a variance for salinity. 32 As discussed throughout these comments, Exponent recommends that the proposed Mercury Provisions be modified so that effluent limitations are not required when they would not produce a discernible reduction in mercury concentrations in receiving waters or fish tissue. However, if the State Board elects not to make these changes, the State Board should adopt a statewide variance policy *concurrently* with the Mercury Provisions.

Responses to Comments—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 Mercury Provisions.

Response: Please see Responses to Comment WSPA2-12. Under current federal regulations the state does not need to adopt a variance policy prior to developing a variance. A Water Board could apply to U.S. EPA for a variance following current federal regulations.			
Letter: WSPA2 , Pg24, P4	COMMENT	Excerpt: 71	Type: BU/Designation
5. Mercury concentrations in many of the state’s water bodies have exceeded the proposed objectives for decades or longer. As such, certain beneficial uses are not existing uses as defined by the Clean Water Act. The proposed Mercury Provisions should be modified to provide guidance regarding implementation measures and time schedules for “goal uses.”			
<p>The Clean Water Act defines an existing use such that it requires both (1) that the activity has occurred since November 28, 1975, and (2) that the water quality has been sufficient to support the beneficial use since that date. State Board staff confirmed that the State Board interprets existing uses using this definition, and that by this definition, many “existing uses” designated in the State’s Basin Plans are not existing uses as defined by the Clean Water Act; State Board staff also clarified that the water boards have the discretion to allow longer compliance schedules for past, present, or probable future beneficial uses as designated pursuant to the requirements of the Porter-Cologne Act (California Water Code). (33)</p> <p>(33) At the January 9, 2017, State Board workshop on the proposed Mercury Provisions, Rik Rasmussen stated that “if they call it an existing use in the basin plan, it’s not necessarily an existing use under federal law, it’s subject to refinement... There’s nothing to prevent the water boards, if they designate a beneficial use as a probable future beneficial use, to either (a) have a different water quality objective as they do it, or (b) have a longer implementation schedule and say ‘hey, it’s a probable future use, we don’t expect this to be met for 50 years’.” (Transcribed from video of the January 9, 2017 workshop.)</p>			
Response: Please see Responses to Comments WSPA2-8, and 13.			
Letter: WSPA2 , Pg25, P1	COMMENT	Excerpt: 72	Type: No Guidance
Although the Staff Report states that “beneficial uses may be designated as a goal use (or probable future use in PorterCologne parlance) where neither the water quality is currently being attained or the use is actually occurring, but there is evidence to indicate that the use would be a probable future use,”(34) the Staff Report does not discuss the additional implementation options that should be available for uses that are “goal uses” as opposed to existing uses under the Clean Water Act.			
Response: Please see Response to Comments WSPA2-8, and 13.			
Letter: WSPA2 , Pg25, P2	COMMENT	Excerpt: 73	Type: BU/Designation
As noted in the Staff Report, mercury concentrations in many of the state’s water bodies have been affected since well before November 28, 1975, by a range of sources, including historic mining, atmospheric deposition, natural geology. Historic mining activity, in particular, has affected many of the region’s water bodies since approximately the mid-1850s. (35) For this reason, concentrations of mercury in fish tissue have exceeded the proposed tissue concentrations for the commercial and sportfishing (COMM), subsistence (SUB), and tribal subsistence (T-SUB) beneficial uses in much of the state for more than one hundred years. Thus, in many cases these beneficial uses cannot be considered to be beneficial uses under the Clean Water Act, and extended compliance schedules, plus other implementation mechanisms as discussed in these			

comments, should be considered by the State Board.			
Response: Please see Response to Comment WSPA2-8. The Provisions and Staff Report Section 10.4 provide a description of implementation plans.			
Letter: WSPA2 , Pg25, P3	COMMENT	Excerpt: 74	Type: No Guidance
Exponent respectfully suggests that the Staff Report and Mercury Provisions should be revised to provide guidance on the designation of proposed beneficial uses, and to identify and provide guidance on the range of implementation actions that will be necessary to achieve meaningful reductions in mercury concentrations in the state’s waters and fish.			
Response: Comment noted. Please see Response to Comment WSPA2-8.			
Letter: WSPA2 , Pg25, P4	COMMENT	Excerpt: 75	Type: Too Stringent
<p>6. The proposed fish tissue objectives for the protection of human health and wildlife are likely too conservative, and the proposed water column targets are flawed. Neither the objectives nor the targets should be adopted at this time.</p> <p>The proposed fish tissue objectives for the protection of human health were derived based on multiple conservative assumptions about exposure and toxicity that compound to make the objectives unreasonably low. For example, the proposed fish tissue concentrations for COMM and T-SUB were derived using EPA’s old default average body weight value (70 kg) (36), rather than the revised default average body weight (80 kg) used in a later document. (37) Using the old body weight (70 kg) rather than the revised default weight (80 kg) drives down the fish tissue concentration. EPA has used the new default body weight (80 kg) to revise human health criteria for several chemicals, (38) but not for methylmercury.</p> <p>Response: The staff report in Appendix H documents the options and calculations of the Human Health objective. The objectives were derived using California specific fish consumption information. As the commenter noted U.S. EPA has not revised the criteria using a different body weight. However, should the Water Board propose a less stringent objective in TL4 fish than the proposed 0.2 ng/L objective, such an objective would not be protective of fish and dependent wildlife; and as such, an additional objective would be required for the protection of wildlife in TL4 dominated waters. See Staff Report Chapter 6.8.2 for a discussion of the need for wildlife specific objectives if the objectives for human related beneficial uses are not protective of wildlife. The objectives were subjected to external peer review. The peer reviewers note that there is additional information that the reference dose used in the calculation could be lower based on additional research “Given the FTC equation, the water quality objective will increase or decrease as the RfD increases or decreases, respectively. While the lower US EPA RfD will result in a more protective FTC, the draft report could acknowledge the uncertainty and variability in determining the RfD and how this would influence the water quality objective.” Given the possible lower RfD and the protection of wildlife the objective was set at a reasonably protective level.</p>			

Letter: WSPA2 , Pg26, P1	COMMENT	Excerpt: 76	Type: Too Stringent
<p>The fish tissue objectives derived for the protection of wildlife are also likely overly conservative. For example, interspecies and NOAEL-to-LOAEL (39) uncertainty factors were applied by USFWS to derive the avian reference dose of 0.021 mg/kg/day used in computing the proposed wildlife objectives. (40) However, a critical review paper by Fuchsman et al. (2017) suggests that the reference dose of 0.021 mg/kg/day may be too conservative. (41) Based on the current literature, Fuchsman et al. propose values between 0.05 mg/kg/day to 0.5 mg/kg/day on a dose basis as suitable for risk assessment. These values are two to 20 times higher than the proposed reference dose, resulting in unreasonably low fish tissue objectives.</p>			
<p>Response: The external peer review suggested the opposite. That looking at the range of possible avian RfDs the wildlife objectives may be under protective but agreed with staff’s ultimate choice and rational for choosing them. Dr. Marc Sanheimrich did an extensive review of avian reference doses and concluded, “Using the alternative RfDs presented in USFWS (2003) indicates that the water quality objective of 0.2 mg/kg in TL4 fish may not be protective of all species. The Draft Report Appendix K (pages K-26 and K-27) makes a logical argument why the alternative RfDs were not used and acknowledges points of uncertainty that suggest a less stringent or more stringent objective. In particular, the acknowledgement and discussion of the limitations and sources of uncertainty in the calculations is a strength of the Draft Report and supports the readers’ assumption that best professional judgement was used in selecting UFs to calculate RfDs.” (Appendix S-16).</p>			
Letter: WSPA2 , Pg26, P2	COMMENT	Excerpt: 77	Type: Too Stringent
<p>Finally, the proposed water column concentration targets (noted above: 12 ng/L, 4 ng/L, and 1 ng/L) were derived using a methodology that is flawed in several ways. Most importantly, the concentration targets were derived using inappropriate bioaccumulation factors (BAFs). Board Staff used two national BAFs to calculate mercury water concentration targets for every water body in California. National BAFs are calculated as the geometric mean of field-measured BAFs obtained from published literature, (42) and range over two to three orders of magnitude due to variability between the many different regions and water bodies. As this broad range suggests, BAFs are site-specific; there is potential for mercury methylation and bioaccumulation to vary significantly from location to location and over time (seasonally). Even within California, conditions vary considerably between regions. As a result, national or statewide default values are likely to be inaccurate on a site-specific basis.</p>			
<p>Response: Commenter is arguing for developing BAFs for every waterbody in the state which the Provisions allows. However, absent the resources to develop site-specific bioaccumulations factors, Staff used a combination of both national and California specific data to develop the values used in the Provisions.</p>			
Letter: WSPA2 , Pg26, P3	COMMENT	Excerpt: 78	Type: Too Stringent
<p>Given the overly conservative and flawed nature of the proposed fish tissue objectives and water column targets, neither set of numbers should be adopted at this time.</p>			
<p>Response: The rationale for the development of the objectives and the water column translators is extensively documented in the Staff Report and particularly in Appendices H, I J, K and L. In addition, the objectives and the water column translators were subject to independent peer review which generally concurred with the recommendation and methodologies in the Staff Report and Provisions.</p>			
Letter: WSPA2 , Pg27, P1	COMMENT	Excerpt: 79	Type: Focus on other Hg sources
<p>7. The implementation program in the State’s proposed policy should be modified to focus on implementation actions that will lead to</p>			

Responses to Comments—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 Mercury Provisions.

meaningful reductions in mercury in the state’s waters and fish.

As detailed throughout these comments and as acknowledged in the Staff Report, non-point sources (including historical mines, atmospheric deposition, and mercury in natural soil and sediments) are the primary sources of mercury in the State’s waters and in fish. For this reason, controls on point sources are not expected to result in a meaningful difference in mercury concentrations in most water bodies. Despite this fact, the proposed Mercury Provisions focus almost exclusively on implementation measures for point sources.

Response: The program of implementation is for the entire state of California which includes large areas outside of the historic gold and mercury mining sites where the majority of the impaired waters exist. The implementation measures include reasonable control of all sources of mercury and such coordinated control is necessary to ensure that the objectives continue to be met where they are currently met. The use of sediments controls as a primary method for controlling pothor, particularly non-point sources of mercury was peer-reviewed and the peer reviewers generally agreed with the approach and such controls are required as part of the Provisions, and in many cases are already being implemented. “The focus on sediment and erosion control in the Storm Water Discharges section of the draft amendment, with a particular emphasis on control measures in areas where soils are naturally rich in mercury or have a history of mining activity, is appropriate.” (Pg. S-10) The Provisions includes specific recommendations for point sources to inform permit writers who must perform reasonable potential analysis and develop permit limits to comply with federal regulations. The Staff Report and Provisions acknowledge the importance of watershed-specific implementation, particularly in impaired waters.

Letter: WSPA2 , Pg27, P2	COMMENT	Excerpt: 80	Type: Effluent Limits
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Although the proposed Mercury Provisions include language stating that the permitting authority is authorized to exempt certain dischargers from some or all of the provisions of the policy if the discharge is found to be “insignificant (de minimis),”(43) it appears that this provision would have very limited application and that stringent mercury effluent limitations would be required for almost all NPDES permits. As noted above, the proposed effluent limitations will be difficult to achieve and are likely to require significant expenditures of resources by NPDES permittees, particularly POTWs and industrial dischargers. Also as noted in Comment 6, the method used in the Staff Report to calculate water column targets from tissue objectives (i.e., the use of national BAFs) does not recognize the complex and site-specific behavior of mercury in the environment, and is likely to lead to effluent limitations that are not appropriate in specific water bodies.

Response: Although the Provisions would require most non-stormwater NPDES permitted dischargers to conduct a reasonable potential analysis in accordance with Chapter IV.D.2.c. of the Provisions, it is anticipated that the vast majority of non-stormwater NPDES discharges will not have reasonable potential to cause or contribute to an exceedance of the Provisions. As discussed in Chapter 6.13.3 and Appendix N of the Staff Report, data from 2009 through 2015 indicates that only about eight percent of all dischargers to rivers and flowing waters exceeded an effluent limit of 12 ng/L total mercury at least once during that period. In addition, the Staff Report states, “Some of these facilities that exceeded the threshold only exceeded it in one or two samples within the past six years, so they may be able to adapt to the threshold without a major facility upgrade.” Since the effluent limit is based on an annual average, rather than a single exceedance, very few facilities would demonstrate a reasonable potential. Those demonstrating reasonable potential could likely achieve the effluent limit of 12 ng/L without the need for major facility upgrades.

For discharges into slow-moving waterbodies, reasonable potential analysis would be based on an effluent limit of 4 ng/L. The 2009 through 2015 self-monitoring report discussed in Section 6.13.3 and included in Appendix N showed that only about twenty seven percent of all dischargers to waters exceeded an effluent limit of 4 ng/L during that period. This indicates that even the greater majority of dischargers into slow-moving waters are not anticipated to demonstrate reasonable potential. Some dischargers may need to install end of the pipe filtration systems or upgrade to tertiary treatment. These costs are considered in Appendix R of the Staff Report (the Economic Analysis). Chapter IV.D.2.b. of the Provisions does allow the Regional Water Boards to develop a site-specific BAF. Requirements for developing a site-specific BAF are included in that chapter in the Provisions.

Letter: WSPA2 , Pg27, P3	COMMENT	Excerpt: 81	Type: Variance Policy
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For point sources, the State Board should consider developing alternatives to effluent limitations for mercury. If effluent limitations continue to be required, the State Board should adopt, concurrently, a statewide Variance Policy (44) to be implemented where water quality standards cannot be achieved within a reasonable timeframe.

(44) We recognize and appreciate that the State Board is in the process of developing a statewide Variance Policy, as noticed on January 13, 2017. However, this policy is scheduled to be adopted after the Mercury Provisions and is being adopted in the context of water quality objectives for indicator bacteria. A Variance Policy is needed with the Mercury Provisions as currently proposed, because the effluent limitations identified in the draft policy are likely not achievable, and will likely not result in meaningful reductions in mercury in the environment.

Response: Please see Response to Comment WSPA2-12. In addition to the use of variances the Provisions allows the use of dilution credits, site-specific water column translators, and TMDL derived effluent limits which may also aid in complying with effluent limits derived from the mercury water quality objectives.

Letter: WSPA2 , Pg27, P3	COMMENT	Excerpt: 82	Type: No Guidance
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Consistent with the State Board’s Order No. 2001-006, site-specific factors should be assessed in determining both the need for effluent limitations and the methods by which those limitations, if needed, should be calculated. The State Board should develop guidance on the following:

- site-specific information that should be used to assess whether point source controls will have a significant impact on mercury concentrations in water and fish
- the information that should be used to determine if a discharge is to “slow moving” waters
- the use of mixing zones and dilution credits (see also Comment 1)
- clear guidance regarding the distinction between existing and “goal” uses, and the implementation measures that would apply to each (see Comment 3)
- the use of extended compliance schedules for “goal uses.”

Response: Please see Response to Comment WSPA2-13.

Letter: WSPA2 , Pg28, P1	COMMENT	Excerpt: 83	Type: Focus on other sources of Hg
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Exponent respectfully suggests that the State Board’s proposed Mercury Provisions offer an opportunity to identify and implement alternative measures for mercury control. Alternative measures should be investigated and discussed in public workshops prior to adoption of the proposed Provisions, and offer the best (perhaps the only) chance to achieve meaningful reductions in mercury concentrations in the environment.

Alternative implementation measures that should be considered include, but are not limited to:

- a program for trading or offsets
- a “water funds” approach to regional or watershed-based mercury control measures
- engaging other state agencies in efforts to control non-point sources (e.g., engaging the Air Resources Board in efforts to control atmospheric sources of mercury)
- programs to address non-point sources.

The most effective approaches to mercury control will be those that identify implementation actions for the primary sources of mercury. The implementation measures currently identified in the proposed Mercury Provisions do not effectively target these primary sources, and the State’s proposed Mercury Provisions should be revised accordingly.

Response: Suggestions for alternative measures of mercury control are appreciated. Focused remediation of primary sources of mercury might reduce downstream loads and fish tissue concentrations of mercury over time. However, in some cases discharges from point sources are significant sources of mercury, and can be the primary source of mercury in water, especially effluent dominated waters. Suggestions such as those put forth by Commenter cannot be developed within the timeframe of this rulemaking or within the context of the need of the Water Boards to fulfil legal obligations to protect human health and wildlife from mercury under existing laws.

The idea of a “program for trading or offsets” is intriguing, given the successful implementation of large water pollution control trading systems in the Great Lakes Restoration Initiative and through mechanisms included in U.S. EPA’s Chesapeake Bay TMDL. However, the watersheds for which these programs have been developed are different from and much larger in scope and scale than those in California, and at present have significant federal resources for their implementation. Furthermore these programs have been developed over the course of many years to control water column concentrations of nutrient pollution in water, which is a very different type of pollutant than mercury/methylmercury in fish tissue. Commenter does not explain how “a program for trading or offsets” would be structured or would be implemented. Similarly, Commenter does not explain what a “water funds approach” is or how such an approach would be structured or implemented in the context of mercury contamination in fish tissue in California.

Commenter does not explain what “engaging” means in the context of reducing mercury concentrations in the environment, or how engaging other agencies would produce effective approaches to controlling non-point sources of mercury.

The Provisions already addresses non-point sources in Chapter IV.D.5. This is a modification of an existing regulatory program, but it is still a “program”. In areas such as non-point source controls there are no additional tools needed to control mercury into the waters. Chapter 7.1.3 of

the Staff Report discusses the efficacy of sediment control in reducing mercury loading to water.

CIEAetAI1

Author: Brandi Brown et al. **Title:** Tribal Councilmember **Organization(s):** California Indian Environmental Alliance, Cortina Rancheria, Kletsel Dehe Band of Wintun Indians; the Karuk Tribe, Redwood Valley Band of Pomo Indians; Sherwood Valley Tribal Environmental Program; the California Indian Environmental Alliance; Klamath Riverkeeper; Environmental Justice Coalition for Water; the Wishtoyo Foundation, and the Wishtoyo Foundation’s Ventura Coastkeeper Program

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Date: 2/17/2017

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Letter: **CIEAetAI1**, Pg1, P1

NOT COMMENT

Excerpt: 1

Type: Greet/Ending

On behalf of the Cortina Rancheria, Kletsel Dehe Band of Wintun Indians; the Karuk Tribe, Redwood Valley Band of Pomo Indians; Sherwood Valley Tribal Environmental Program; the California Indian Environmental Alliance; Klamath Riverkeeper; Environmental Justice Coalition for Water; the Wishtoyo Foundation, and the Wishtoyo Foundation’s Ventura Coastkeeper Program we thank you for this opportunity to comment on the **SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives**. For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.

We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.

It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.

The legacy of Mercury in California land and waters is a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their 2 inherent responsibility to protect the environment that sustains their Peoples and all living things. When addressing the toxicity that persists from this era, it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Plan.

<p>In order to assist in the success of this Plan and efforts that will stem from it, we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions:</p>			
<p>Response: Thank you for your support. Comment noted.</p>			
Letter: CIEAetA11, Pg2, P6	NOT COMMENT	Excerpt: 2	Type: BU/Designation
<p>Continued inclusion of CUL, T-SUB and SUB</p> <p>As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subs. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.</p> <p>Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice their culture and to eat traditional foods, it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete.</p> <p>The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial uses definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.</p> <p>Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely “tribal traditional and cultural uses” and “tribal subsistence fishing” in order that they could be applied statewide. Definition development began with the language first adopted by Region 1, and for four years CIEA worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Plan which unfortunately changed these definitions as follows:</p>			
<p>Response: Comment noted.</p>			
Letter: CIEAetA11, Pg2, P10	COMMENT	Excerpt: 3	Type: BU/Designation
<p>In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm what cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase “as affirmed by California Native American Tribe(s),” was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.</p>			

In the Plan staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of “minimal,” which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word “fundamental” purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.

Recommendations:

- Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses
- That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily.
- That the definitions be revised in the following manner in order to return them to their original meaning and intent:

Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]

Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal [fundamental] needs for sustenance.

Response: We appreciate the Tribes’ support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.

While the phrase “as affirmed by California Native American Tribe(s)” has been removed from the language in the definition (because such affirmation does not accurately comprise a part of the definition). Instead, the direction that a tribe affirm the designation is located in the introductory language in Beneficial Uses (Chapter II) of the Provisions, which states That directive has the same intention and effect as the phrase that was removed from the Tribal Tradition and Culture beneficial use definition except that the directive applies to the CUL beneficial use and the T-SUB beneficial use to recognize that tribes have the knowledge of where such uses occur as compared to other parties. Because the directive would be contained in a statewide water quality control plan, that directive would govern the application of the two tribal beneficial uses upon the uses being incorporated into a Regional Water Board’s basin plan.

Secondly, the qualifier term, "minimal," has been removed from the definitions for T-SUB and SUB in the Provisions.

Letter: CIEAetAI1, Pg4,	COMMENT	Excerpt: 4	Type: Human Activities
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P15			
<p>Bioavailability of Mercury</p> <p>We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bioaccumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations. 			
<p>Response: Section 4.4.8 of the Staff Report is focused on the difference in the bioavailability of inorganic mercury and sources of inorganic mercury as opposed to methylmercury and direct sources of methylmercury. Dredging activities are discussed in greater detail in Sections 7.2.3 and 6.10 of the Staff Report. Section 7.2.3 of the Staff Report goes into greater detail regarding dredging activities and discusses the concern that dredging activities, even those that remove some mercury from the environment, also released some mercury trapped in the sediments. The mercury released into a waterbody is more readily methylated. Section 6.10 of the Staff Report discusses the options to address dredging activities. Under the Board staff recommended option, contemporary dredging and fill activities would continue to comply with Clean Water Act section 401 and 404 requirements and dredging activities not subject to federal regulation would continue to be required to comply with existing Porter-Cologne Act waste discharge requirements.</p>			
Letter: CIEAetA11, Pg4, P17	COMMENT	Excerpt: 5	Type: Objectives/other contaminants
<p>Current and Future Use of the Beneficial Use Provisions:</p> <p>Page xvii of the Executive Summary states that “the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established.” This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word “is.”</p> <p>Page xviii states that associated mercury WQOs related to subsistence beneficial uses (T-SUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments. • That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates. • That this forward thinking sentiment also be extended explicitly in the Plan to the continued application of the Tribal Cultural beneficial use. 			

Response: Future TMDLs will be developed to attain designated uses at the time they are developed. Should a water body for which an existing TMDL be designated with a new beneficial use, such as T-SUB, SUB, or CUL the Water Boards will need to evaluate whether the existing TMDL will be sufficient to attain any water quality objectives associated with any new beneficial use designations.

The Provisions does not need to reiterate that TMDLs are adaptive by nature as that would be duplicative of the existing Water Quality Control Policy “Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options” and the approved TMDL guidance which stresses the adaptive management approach to TMDLs.

Also, Please see Response to Comment WSPA2-27.

Letter: CIEAetAl1 , Pg4, P22	COMMENT	Excerpt: 6	Type: T-SUB Objective
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Strengthening of the T-SUB Water Quality Objectives

This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is “the same as the U.S. EPA nationally recommended subsistence rate.”

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.

Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.

We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California’s beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 85417, November 28, 2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast

Responses to Comments—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 Mercury Provisions.

states bordering our shared Pacific Ocean and river systems.

The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported “CA Tribal Fish Consumption Study” (SWRCB- UC Davis, 2016), which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% TL3/30% TL4 mixture, and that all Tribes do not consume the same fish species.

Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available. When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.

We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides an overview of CA Tribal fish consumption patterns, it is not exhaustive. It can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.

We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.

Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows

- That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) based on a fish consumption rate of 175 grams per day, allowing safe consumption of fish at 5-6 meals per week,
- That the Plan affirm that this WQO is a minimum statewide standard,
- That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level
- That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat
- That the Plan include language regarding the applicable state and federal anti-degradation or anti-backsliding provisions
- It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective

Responses to Comments—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 Mercury Provisions.

Type, Beneficial Uses and WQO are related to meals per week.

Response: The Water Boards evaluated the data in the fish consumption study and used that data to derive the current mercury objective to protect the T-SUB beneficial use. A higher consumption rate could be developed, as appropriate, upon designation of the T-SUB beneficial use. The Staff Report acknowledges that the objectives to protect T-SUB may not be suitable statewide and encourage the Water Boards to use site-specific data and information to adopt site-specific objectives, if necessary, at the time waters are designated “If site-specific fish consumption information suggests that a different consumption pattern would better reflect the tribes in a certain area, the Regional Water Board should establish a modified water quality objective. This information would be determined by a suitable angler survey. The study could be done in conjunction with the designation of beneficial use of tribal subsistence fishing. Site-specific information may be available for some tribes in the Tribes Fish Use study (Shilling et al. 2014) or by contacting the author of the study” (pg. 115). The selection of the current water quality objective balances considers all of the factors as required by Water Code section 13242. Setting the objective to the “past” consumption rate of a state wide basis. The consideration of the factors, as pertinent to the selection of the objective for T-SUB is discussed on Chapter 6.5 of the Staff Report. At the time of beneficial use designation the Water Boards should take into consideration the site-specific factors and could, at the time of designation, set a different consumption rate that could be the “past” rate as recommended by the commenter.

Outside of tribal lands the tribes do not designate the beneficial uses. And the Regional Boards have a broad discretion on when and how to designate past, present or probable future beneficial uses – as discussed in the Staff Report: “Designation of the uses to specific water bodies would primarily remain the responsibility of the Regional Water Boards through their respective basin planning process. Generally, the Regional Water Boards designate specific waterbodies within their respective region where the use applies. A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).” (See pgs. 107-108)

The water quality objective to protect T-SUB would apply to any water designated T-SUB. Water quality objectives only apply to waters that are designated or where the use can be shown to be an “existing use” under federal regulations (The use occurred and the water quality was sufficient to protect the use on or after November 28, 1975). The water quality objective would apply to any waters designated or found to be an existing use unless a site-specific objective was developed at the time of designation.

It is beyond the scope of the Provisions to include measures to increase the availability of traditional TL3 fish and to provide a mechanism to fund an exposer reduction program. Such programs would be better addressed at a local level through programs within the Department of Public Health or through the Department of Fish and Wildlife who have the authority to manage fish stocking and fish restoration. Appendix E-4 discusses some mercury reduction and public education programs that have taken place.

It is not necessary for the Provisions to restate existing state and federal law regarding anti-degradation of anti-backsliding as it would be redundant and duplicative. The Staff Report discusses the application of anti-degradation and “existing uses.” “Existing uses” are “those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.” (40 C.F.R.

§ 131.3(e).) “‘Designated uses’ are those uses specified in water quality standards for each water body or segment whether or not they are being attained.” (40 C.F.R. § 131(f).) “Water quality criteria” are “expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.” (40 C.F.R. § 131.3(b).) Antidegradation policies generally must provide three levels (tiers) of water quality protection to maintain and protect existing water uses, high quality waters, and outstanding national resource waters, consistent with 40 Code of Federal Regulations section 131.12.

Under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), California law designates the State Water Board and the nine Regional Water Boards as the principle state agencies for enforcing federal and state water pollution law (Wat. Code, §§ 13140, 13160, 13225, 13240). California law defines “designated uses” and “water quality criteria,” respectively, as “beneficial uses” and “water quality objectives” (Wat. Code, § 13050, subs. (f), (h)). Regional Water Boards are required to establish water quality control plans for all areas within their regions (Wat. Code, §13240), and those water quality control plans must designate or establish, in part, beneficial uses within the areas governed by that plan (Wat. Code § 13050, subd. (j)).” (pg. 22)

Table H-1 provides a summary of fish consumption rates and corresponding objectives that would be derived from the consumption rates (see Appendix page H-3).

Letter: CIEAetA11 , Pg6, P36	COMMENT	Excerpt: 7	Type: BU/Designation
<p>CUL Water Quality Objective Considerations</p> <p>We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.</p> <p>Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.</p> <p>Recommendation: 6.6 Issue F. – Yes, Option 3/amended as follows</p> <ul style="list-style-type: none"> • We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses. • That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses. 			
<p>Response: We believe that Chapter 6.6.2 of the Staff Report addresses CIEA’s first comment by recommending that Regional Water Board staff</p>			

work with Tribes during any designation of the CUL use. Additionally, although not specifically included in the definition itself, the proposed Mercury Provisions includes a clear statement that a California Native American Tribe must confirm the designation is appropriate (see Response to Comment CIEAetA1-3).

Please see Response to Comment WSPA2-13 regarding guidance provided to Regional Water Boards.

Letter: CIEAetA1 , Pg 7 , P40	COMMENT	Excerpt: 8	Type: Revisit RSC
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Revisit the RFC [sic]

The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).

The calculation for the Mercury WQOs to protect human health describes the RSC as follows:

RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day.

Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?

Recommendation:

- That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation.

Response: The U.S. EPA relative source contribution is the best available estimate of other sources of fish consumed by residents in California. Although the consumption of purchased fish may vary by location throughout the state, that information was not available and would likely require specific local surveys to determine the appropriate relative source contribution for regions or specific locations throughout California. Chapter IV.D.3. of the Provisions states, "the Mercury Water Quality Objectives do not supersede any site-specific numeric mercury water quality objectives established in a Basin Plan." If a Regional Water Board establishes any site-specific mercury water quality objectives for human health the Regional Water Board may use a regional or site-specific study to determine the appropriate relative source contribution. The Regional Water Board may work with California Tribes, CIEA, and others to conduct surveys studies to determine the appropriate site-specific or regional relative source contribution.

Letter: CIEAetA1 , Pg 7 , P43	COMMENT	Excerpt: 9	Type: BU/Designation/Guidance
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Evidence in Designating Beneficial Uses

On Pg. 111 the Plan text states that *“The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses.”* The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils. 8

We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: *“However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition.”* There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.

Recommendation:

- That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level.
- That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use.

Response: Anecdotal evidence would be circumstantial or hearsay evidence. Written and oral testimony of culture and traditions from members of a tribe that practice those traditions or culture would not be considered circumstantial or hearsay evidence. Section 6.4.3 of the Staff Report says, “Water Boards should consider both current and documented past practices, especially in areas where tribal practices have been limited due to lack of access. Such written and oral testimony from tribal members would be important evidence for the Water Board to rely upon in designating the Tribal Culture and Tradition beneficial use and the Tribal Subsistence Fishing beneficial use.”

Regarding the statement in Section 6.4.3 of the Staff Report that states, “However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition,” the Staff Report is referring to single individuals that utilizes the water in an unusual way that puts them at a higher risk. Examples of such practices would be a single individual that consumes fish at more than twice the rate of other subsistence fishers, or recreational swimmers that spend twice as much time in the water as compared to all other recreators in that water. These exposure levels and risk are at the discretion of the individual and not part of a cultural practice. The Staff Report is affirming that it is not our intent to require water managers and dischargers to meet very strict water quality standards and effluent limits because one individual chooses activities that have a very high exposure rate. This would not apply to tribal traditional and cultural practice that places one or more individuals at risk during an activity that is a part of that tradition or culture.

Regarding guidance for the Regional Water Boards, Please see Response to Comment WSPA2-8.

Letter: CIEAetA1, Pg8,	COMMENT	Excerpt: 10	Type: Modify Definition
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P47			
<p>Expand Examples of Trophic Level 4 Fish</p> <p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • Include sturgeon in the definition section of the Plan text as follows: <p style="padding-left: 40px;">TROPIC LEVEL 4 FISH (TL4): Fish that consume TROPIC LEVEL 3 fish and other aquatic organisms. [Examples of these s]pecies include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C.</p>			
<p>Response: The Staff Report, on page 99 states, “Other commonly consumed trophic level 4 species are crappie, large white catfish, large channel catfish, sturgeon, and large brown trout.”[emphasis added] And sturgeon are included in the list of species in Attachment C. The list in the Provisions is not intended to be a complete list of TL4 fish.</p>			
Letter: CIEAetA11 , Pg 8 , P49	COMMENT	Excerpt: 11	Type: Add Text/SB 52
<p>Include information regarding Tribal Consultation</p> <p>We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that: 9</p> <p>“Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))”</p> <p>This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order B10-11.</p> <p>Recommendation:</p>			

That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, "Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes." Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self-government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52.

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those policies. One example is the policy developed by the Karuk Tribe.

Response: The comments and recommendations to include references to the above executive orders and legislation are noted.

The State Water Board's Staff Report and Substitute Environmental Document (Staff Report) contains significant detail regarding State Water Board outreach efforts to consult California Native American tribes, including Early Public Consultation/Scoping (Section 2.6.3), Focus Group

Responses to Comments—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 Mercury Provisions.

Meetings (Section 2.6.4 and Table 2-1), Tribal and Subsistence Fishing Beneficial Uses Outreach Meetings (Section 2.6.5 and Table 2-2), and Notice to California Native American Tribes of Opportunity for Consultation (Section 2.6.6). These sections also include detail regarding the legislation that requires consultation with California Native American tribes.

With respect to Executive Order 13175 and S.B. 18, those do not place recommendations or requirements on a state agency, such as the State Water Board, as they pertain to federal agencies or cities and counties, respectively. The Staff Report, at Section 2.6.6, specifically details A.B. 52’s formal notice and consultation requirements the State Water Board construes as applying to the development of the Staff Report and consideration of the Provisions and provides that the State Water Board satisfied those requirements. Finally, with respect to Executive Order B-10-11, it provides that it is the policy of the administration of the Governor of the State of California that every state agency encourages consultation and communication with California Indian Tribes and permit tribal governments to provide meaningful input in the development of regulations, rules, and policies that may affect tribes. The State Water Board’s website contains information and resources for the Office of Public Participation for Tribal Affairs, including A.B. 52 and the Governor’s order. The Staff Report, at Section 2.6.3, has been revised to incorporate the policy of Executive Order B-10-11.

Letter: CIEAetA11 , Pg10, P58	COMMENT	Excerpt: 12	Type: Minor Revision
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in “Loleta (Eureka).” This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor

Response: Comment noted. The Reference to Eureka is for geographic purposes only. Eureka is an incorporated city more widely recognized by persons outside the north coast region, and is located approximately 15 miles from Loleta. Loleta is somewhat smaller in size and is not an incorporated city. The City of Eureka and the designated area of Loleta are associated primarily for geographical reference purposes. The Staff Report is amended to describe the location as “Loleta (near Eureka)” in Table 2-2.

Letter: CIEAetA11 , Pg10, P60	COMMENT	Excerpt: 13	Type: BU/Designation
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Statement of Necessity for Beneficial Uses

In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain

“to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.” (Resolve Clause No. 1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, REC1, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:

these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order “to create a consistent set of beneficial uses to be used” (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan...

Response: Comment noted. Section 2.3 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) is considered sufficient explanation of the basis for needing a new set of beneficial uses that pertain “to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals” to be considered by Regional Water Boards when modifying their water quality control plans. The spatial or temporal distribution of tribal activities is considered more important and material to the designation of beneficial uses for a specific region or body of water, and should be considered during the water quality control planning process. The statement of necessity is intended to address, in part, the administrative law requirements for showing necessity for the Provisions under Government Code section 11353, subdivision (b)(4).

Letter: **CIEAetAI1**, Pg11, P53

COMMENT

Excerpt: 14

Type: Revision

Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

Responses to Comments—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 Mercury Provisions.

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus at-risk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

Response: Comment noted.

- The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) is required to contain a statement of overriding considerations which provide basis for approving a project which may result in unavoidable adverse environmental effects. (Cal. Code Regs., tit. 14, § 15093). Appendix U contains the required statement of overriding considerations, and includes material information regarding the environmental benefits of the Provisions (Staff Report, Appendix A) as compared to the potentially unavoidable environmental effects, as well as the rationale for accepting the environmental effects under the circumstances in order to protect the health of wildlife and humans who consume locally caught fish.
- Comment and recommendation regarding messaging in Appendix U, section 1 is unclear, and specific section and paragraph referred to for possible amendment is also unclear. While recommended amendment is noted, it is not included as it does not appear material to – and may distract from - the purpose of Appendix U, which is to present a statement of overriding considerations as it pertains to CEQA and the potentially adverse environmental impacts that may result from adoption of the Provisions.
- A discussion of the various state health advisories is included in Section E.4 of Appendix E of the Staff Report. The Provisions itself does not address requirements for advisories related to mercury in fish tissue. Such advisories are coordinated through the efforts of OEHHA and state and local health departments.

Letter: CIEAetA11 , Pg12, P66	NOT COMMENT	Excerpt: 15	Type: Greet/Ending
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Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Comment noted.

CVCWA1**Author:** Debbie Webster **Title:** Executive Officer **Organization(s):** Central Valley Clean Water Association**Address:** 1225 8th St., Suite 595, Sacramento, CA 95814 **Interest Group:** Environs**Date:** 2/17/2017**Contact person:** Debbie Webster **Phone:** 530-268-1338 **E-mail:** [Click here to enter text.](#)

Letter: CVCWA1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self-Description
<p>The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to provide written comments on the proposed revisions to the proposed <i>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 Mercury Provisions</i> (Proposed Beneficial Uses and Mercury Provisions). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. This letter is submitted in conjunction with three other representatives of publicly owned treatment works (POTWs): the California Association of Sanitation Agencies (CASA), the Southern California Alliance of POTWs (SCAP), and the Bay Area Clean Water Agencies (BACWA). CASA represents over 100 public wastewater agencies located throughout the state of California. SCAP represents over 80 wastewater treatment and collection system agencies located in the seven southern California counties. BACWA is a joint powers agency comprised of local clean water agencies that provide sanitary sewer services to the more than seven million people living in the nine-county San Francisco Bay Area.</p>			
Response: Comment noted.			
Letter: CVCWA1, Pg2, P1	NOT COMMENT	Excerpt: 2	Type: Greet/Ending
<p>We sincerely appreciate the time that individual State Water Resources Control Board (State Water Board) members and staff have taken over the last month to work with us on these issues. We believe that these collaborative discussions should broaden to include tribal and subsistence fishing representatives as a means to arrive at a sustainable and productive approach to implementation of the three proposed beneficial uses in the Central Valley and throughout California.</p>			

Response: Comment noted.			
Letter: CVCWA1 , Pg2, P3	NOT COMMENT	Excerpt: 3	Type: Summary
As we have stated in our meetings to date, CVCWA is supportive of the three new proposed beneficial uses. We agree with tribal and subsistence fishing representatives that these uses have long existed and should be formally recognized as part of our water quality control planning process under the Clean Water Act and California Water Code. CVCWA does have some remaining concerns about the manner in which these beneficial uses have been proposed. Our primary questions pertain to the definitions used and the process and principles to be used by Regional Boards in the designation and implementation of those uses and associated water quality objectives. We have included some ideas for your consideration on this topic in this letter. As we have discussed, CVCWA and other POTW representatives look forward to working collaboratively with Regional Boards, tribal representatives, and subsistence fishing representatives on these issues.			
Response: Comment noted.			
Letter: CVCWA1 , Pg2, P4	COMMENT	Excerpt: 4	Type: Focus on Other Sources
Regarding the proposed Mercury Provisions, we advocate that the proposed policy be modified to take full advantage of available information and understanding we have derived from the significant collaborative work and research devoted to mercury standards and total maximum daily loads (TMDLs) over the past 15 years. As we have discussed, under the proposed implementation plan for municipal and industrial NPDES permittees, many point sources which are not significant contributors to mercury loadings would be required to install costly treatment plant upgrades. We do not believe this is an intentional action by the State Water Board, as it would not contribute to meaningful reductions in levels of mercury in fish tissue. In this letter and attachments, we have provided alternative language to avoid these unintended consequences.			
Response: Comment noted, and the Association is correct, it is not the intent of the mercury amendment to require costly treatment plant upgrades. First reasonable potential needs to be established before any point source would need to implement some means of compliance including costly advanced treatment plant upgrades. An effluent limitation may also incorporate available dilution if the receiving water does not exceed the applicable tissue based mercury water quality objective. So it is premature to conclude the costs of the impacts. Also it is important to recognize that these mercury provisions would not apply to many point sources that discharge to receiving waters for which mercury or methylmercury total maximum daily loads have been established. We will review the alternative language provided. In addition, the Provisions has incorporated much of what has been learned in the development of various mercury TMDLs. This body of knowledge has led, in part, to the selection of the consumption rate (from the S.F. Bay Consumption Study), the approach to dealing with non-point sources and wetlands to name a few. While point sources in the heavily impacted waters of the Sacramento Delta and San Francisco Bay have been found to be a minor source during the development of the cited TMDLs this likely will not hold true throughout the state, especially in areas not impacted by legacy mercury sources.			
Letter: CVCWA1 , Pg2, P5	COMMENT	Excerpt: 5	Type: BU/Designation
As you are well aware, in addition to impacting mercury objectives, the proposed beneficial uses, once designated, will impact water quality objectives for numerous other pollutants, including all of the human health objectives currently governed by fish consumption considerations. We believe it has been instructive to see how the implementation of the proposed uses would impact mercury fish tissue objectives and related implementation measures. The specific issues arising with regard to mercury provide a good case example to inform future implementation of			

Responses to Comments—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 Mercury Provisions.

<p>new beneficial uses for other pollutants of concern, many of which are legacy problems requiring different solutions. CVCWA and other NPDES-permitted entities sees the need to collaborate closely with you and your staff, Regional Water Boards, tribal and subsistence fishing representatives, and other key stakeholders to work on these issues to develop meaningful regulatory requirements and implementation plans.</p>			
<p>Response: The designation of beneficial uses will need to go through a water quality standard adoption process including a Basin Plan Amendment which also includes a public comment process which will involve the collaborative interaction of all interested and affected parties. It is important to also note that designation of the proposed beneficial uses does not automatically also adopt new water quality objectives. There are already applicable water column water quality objectives for numerous priority pollutants under the California Toxics Rule that apply for protection of Human Health due to other already established beneficial uses such as COMM and MUN for consumption of the water and organism or for other designated uses for consumption of organism only. The Staff Report states in Chapter 6.4.2 that: “A water quality objective for one beneficial use may be sufficiently protective of other beneficial uses. As a result, even when new beneficial uses are designated for a water body, new designations do not necessarily mean that additional water quality objectives, restrictions on waste discharges, or other new or different actions will be necessary. Existing water quality objectives for an existing beneficial use may be sufficient to protect the newly added beneficial uses. In instances where water quality objectives for existing beneficial uses are not protective of newly added beneficial uses, new water quality objectives may need to be developed. On the other hand, even when a new beneficial use is designated for a water body, the designation does not necessarily mean that an additional water quality objective, restriction on waste discharges, or other new or different action would be necessary to protect those uses. Existing water quality objectives for an existing beneficial use may be sufficient to protect the newly added beneficial uses” (pg. 104). The evaluation as to the need for additional water quality objectives will, by necessity, happen when specific water bodies are designated.</p>			
Letter: CVCWA1, Pg2, P6	NOT COMMENT	Excerpt: 6	Type: Mercury Sources
<p>As a prelude to providing our direct comments on the proposed uses and Mercury Provisions, we begin by reviewing the information that we presented in public at the February 7, 2017 hearing which highlights some of our major concerns with the Proposed Mercury Provisions.</p> <p>As stated in our testimony, significant work has been done under the San Francisco Bay and Delta mercury TMDLs to increase our understanding of mercury sources, control measure effectiveness and fish tissue levels. In the Delta methylmercury TMDL (which was approved by the State Board in 2010 and has been in the Phase 1 implementation stage for almost five years), significant data collection, data analysis and control measure assessment activities have been undertaken by various entities. Under the CVCWA Methylmercury special project effort, accurate information has been developed to understand past, present and future POTW mercury source contributions to the Delta</p>			
<p>Response: Comment noted, Please see Response to Comment CVCWA1-7.</p>			
Letter: CVCWA1, Pg3, P1	COMMENT	Excerpt: 7	Type: Focus on Other Sources
<p>Figure 1 below shows the various sources of methylmercury to the Delta. The major sources, on a mass basis, are tributary rivers and streams, open water and wetlands. Loadings from POTWs, urban runoff and agricultural runoff are very small in proportion to the other sources. This chart also shows the diminishing load from POTWs as treatment upgrades to address existing NPDES permit requirements are implemented. These changes will occur over the next five to ten years, independent of other policies or requirements. These facts demonstrate that additional</p>			

<p>controls on POTWs and other insignificant mercury discharges to the Delta will not yield significant changes in either methylmercury loadings or methylmercury levels in fish. The question of whether major reductions can occur due to management of major sources is being studied under the Phase 1 TMDL effort; currently, this is a significant unknown. Clearly, if levels of mercury in fish are to dramatically decrease, this is where reductions must occur. [See Fig. 1 on page 3]</p>			
<p>Response: Figure 1 shows MeHg mass loading of grams/year in a very large water body of the Delta. The very small MeHg mass loading into the Delta is because the amount of wastewater flow from POTWs is very small comparing with the flow from tributaries. Regarding stormwater flow, due to drought situation, California has not had much rain, thus the stormwater flow is very low in the past few years and resulted in very small mass loading to the Delta water. The mercury could have a large impact if wastewater is discharged to a small and slow flowing stream of receiving water. Furthermore, the Delta already has a MeHg TMDL, thus the Provisions does not apply to the Delta (see Provisions Chapter IV.D.1).</p>			
Letter: CVCWA1 , Pg3, P2	COMMENT	Excerpt: 8	Type: Other Data
<p>Figure 2 below shows the ability of ten high-end, advanced wastewater treatment plants, consisting of nitrification, denitrification and tertiary filtration, to achieve the effluent limits described in the proposed Implementation Plan for NPDES dischargers. The chart shows the percentage of time that high performing POTWs could be expected to attain annual average effluent concentrations of total mercury ranging from 1 to 12 nanograms per liter (ng/l). Examination indicates that these plants could be expected to achieve 12 ng/l almost all the time, 4 ng/l 85% of the time, and 1 ng/l 33% of the time. The 1 ng/l effluent limit is associated with proposed fish tissue objectives for the Tribal Subsistence use in slow-moving waters. Arguably, this limit would pertain to most of the POTWs in the Delta and in San Francisco Bay, where hydrodynamic conditions are tidally influenced. [See Fig. 2 on page 4, see Attachment A for full size version of fig. 2]</p>			
<p>Response: The Staff Report section 7.2.7 on page 173 - 174 has extensive discussion that <i>“It is anticipated that major facility upgrades are unnecessary to achieve the effluent limitations in the sport fish and wildlife objectives in flowing water bodies. The Sport Fish Water Quality Objective water column concentration proposed in the Provisions is about five times more stringent than the lowest human health water quality objective promulgated in the CTR applicable to COMM (12 ng/L total mercury versus 50 ng/L). ...”</i> Furthermore, the Staff Report explains on pages 162 – 163 that pollution prevention or source control are potentially effective in achieving sufficient reductions to enable POTWs to meet effluent limits that are 7.8 ng/L or lesser. The water column translator associated with the beneficial use for T-SUB of 1 ng/L is for slow-moving waters that have conditions that are likely to methylate mercury at a higher rate such as lagoons and marshes (see staff report pg. 10). The Staff Report states in Chapter 6.13 that: <i>“Slower moving waters may experience higher rates of mercury methylation and bioaccumulation. For estuaries, there are no established BAFs. Some estuaries may experience flushing and the translation for the rivers BAF may be the most appropriate value to use. On the other hand, some estuaries may be enclosed and more stagnant, and the U.S. EPA BAFs for lakes may be more appropriate. Due to the uncertainties surrounding an appropriate number for estuaries, the draft national BAF that combined lakes and rivers data was used to derive a water column translation for slow-flowing estuaries and bays (Appendix I), and the resulting effluent limitation is 4 ng/L. These receiving waters were classified as “slow-moving water bodies” in the Provisions for permitting. Professional judgment of the permit writer and site-specific information is needed to asses if the receiving water type would best be categorized as “slow-moving” or “flowing””</i> (pg. 155). It is unlikely that most of the flowing delta would be classified as a slow-moving water. Additionally, the Provisions does</p>			

not apply to waters that have an established TMDL for the beneficial uses designated. Should a beneficial use of T-SUB be designated for water bodies for which existing mercury TMDL is in place the appropriate regulatory action would be to reopen the TMDL to incorporate the requirements to meet the newly designated beneficial use. At that time the Water Boards can appropriately modify the waste load allocations to take into account site-specific conditions that can lead to attainment of all applicable water quality standards.			
Letter: CVCWA1 , Pg4, P3	NOT COMMENT	Excerpt: 9	Type: Economics
This would require most POTWs to upgrade beyond the most advanced treatment levels currently practiced in California. Given the insignificant beneficial impact of such actions (and the associated major resource commitment required to implement such actions), CVCWA and other POTW associations in California have identified the need to modify the NPDES implementation plan contained in the proposed Mercury Provisions. [Also see Fig. 2 on page 4, see Attachment A for full size version of fig. 2]			
Response: The Provision includes an effluent limit of 12 ng/L for flowing waters and an effluent limit of 4 ng/L for slow-moving waters. Since approximately ninety three percent of discharges are to flowing waterbodies (See Table N-3a in Appendix N of the Staff Report). The majority of dischargers will need to meet this effluent limit. Table N-6 in Appendix N shows that ninety three percent of dischargers were meeting an effluent limit of 12 ng/L from 2009 through 2015 and Table N-7 of Appendix N shows that seventy three percent of all dischargers were meeting an effluent limit of 4 ng/L from 2009 through 2015. Therefore, the vast majority of facilities will not need to upgrade to meet the effluent limits contained in the Provisions and the effluent limits in the Provisions are achievable with current technologies.			
Letter: CVCWA1 , Pg4, P1	COMMENT	Excerpt: 10	Type: Summary
<p>Major Comments</p> <p>CVCWA's major comments on the Proposed Beneficial Uses and Mercury Provisions are provided below. Our major comments fall under the following major topic areas:</p> <ul style="list-style-type: none"> • MC-1: Implementation of Mercury Water Quality Objectives - Municipal and Industrial Wastewater Dischargers • MC-2: Implementation of Mercury Water Quality Objectives – Assignment of Mercury Abatement Responsibility to State Agencies • MC-3: Guidance to Regional Water Boards regarding Designation and Implementation of Proposed Beneficial Uses • MC-4: Clarification of Language in Beneficial Use Definitions • MC-5: Process for Adoption of Mercury Fish Tissue Objectives <p>Note that, in this letter, we have not attempted to identify all associated changes in the staff report and other documents to reflect changes we have suggested to the regulatory language. We do request that such changes be made, by reference, and are willing to work with staff on those changes subsequent to deadline for these written comments.</p> <p>We have also included several Other Comments at the end of this letter addressing more specific issues.</p> <p>MC-1: Implementation of Mercury Water Quality Objectives - Municipal and Industrial Wastewater Dischargers</p> <p>Our comments address three main topics pertaining to the proposed implementation plan for municipal and industrial NPDES dischargers:</p>			

- Use of Bioaccumulation Factors to convert fish tissue objectives to water column values
- Determination of Reasonable Potential
- Development of Effluent Limitations Specific comments in these topic areas are provided below.

Response: Responses to each concern are included in Responses to Comments CVCWA1-11 through 52.

Letter: **CVCWA1**, Pg5 P1

COMMENT

Excerpt: 11

Type: BAFs

Use of Bioaccumulation Factors to convert fish tissue objectives to water column values

The proposal to use bioaccumulation factors as a key element of the proposed NPDES implementation approach for mercury creates unacceptable outcomes. The following comments are intended to clarify this issue and illuminate the need for a different implementation approach.

The use of BAFs is Not Legally Required

First, it is important to point out that the decision to use bioaccumulation factors (BAFs) in the proposed mercury provisions (specifically in the implementation for NPDES-permitted municipal and industrial point sources) is not driven by federal or state legal requirements under the Clean Water Act (CWA). The decision to use BAFs, instead, is a policy choice which is intended to simplify the analysis of reasonable potential and the derivation of effluent limitations in the NPDES permitting process. However, this choice is not without many disadvantages, many of which are obliquely recognized in the Staff Report/SED. Given that it is a policy choice for the State Board, it is also appropriate to identify and understand the disadvantages associated with this decision.

Response: Pursuant to section 303(c) of the Clean Water Act, states must adopt water quality objectives that protect beneficial uses. As described in the Staff Report (App. I (Calculation of Water Column Targets)) and U.S. EPA’s 2010 guidance for implementing methylmercury objectives (EPA 823-R-10-001), U.S EPA recommends states adopt methylmercury objectives expressed as a fish tissue value rather than a water column objective.

As discussed in the Staff Report (Section 6.12), federal regulations require water quality based effluent limitations for NPDES permittees with reasonable potential to cause or contribute to an excursion above a water quality objective. (33 U.S.C. § 1311(b); 40 C.F.R. § 122.44(d).) The State Water Board’s SIP is used to establish the need for effluent limitations for wastewater and industrial discharges (does not include storm water discharges), including those with NPDES permits. U.S. EPA’s 2010 guidance acknowledges several options are available to the states to adopt revised mercury objectives and that a state is not required to translate the fish tissue objective into a water column criterion. But U.S. EPA provides that where a water column translation of the fish tissue criterion has been developed or where site-specific data to do so are readily available, states should translate the fish tissue objective, and implement using traditional approaches. (U.S. EPA Guidance, p.21.)

The goal with using the bioaccumulation factors to derive a water column translation is to render the reasonable potential analysis and the calculation of any necessary numeric effluent limits feasible. Establishing water column translation values performs the detailed process and explains how the Water Boards will interpret the fish tissue objectives so that a quantifiable term can be utilized in permitting. (Provisions, Chpt.

Responses to Comments—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 Mercury Provisions.

IV.D.2.b.) Another advantage is that this approach is more consistent with the federal regulations on NPDES permitting. (40 C.F.R. 122.44(d)(1)(vii).)

The Staff Report acknowledges there are uncertainties in calculating bioaccumulation factors and discusses those uncertainties (Staff Report, App. I, Section 1.7 (“U.S. EPA recognized that the approach taken to derive mercury BAFs collapses a very complicated non-linear process, which is affected by numerous physical, chemical, and biological factors, into a rather simplistic linear process.”).) In recognition of numerous factors of a site-specific nature that may influence bioaccumulation in fish, the Provisions (Chpt. IV.D.2.b.1) contains the option for the permitting Water Board to develop a” by utilizing a site-specific BIOACCUMULATION FACTOR, linear regression model, or peer-reviewed model, derived from a study of the receiving water downstream of the discharge.” In .addition see Responses to Comments WSPA2- 54 and 61

In rendering the recommendation to develop water column translation values (Staff Report, Section 6.12.3), the Staff Report identifies and discusses the advantages and disadvantages of the Provisions setting forth a method which renders calculation of numeric effluent limits feasible, as well as the advantages and disadvantages of pursuing other approaches. (Staff Report, Section 6.12 (Issue L. What procedures should be used to determine which municipal wastewater and industrial discharges would need effluent limitations?), Section 6.13 (Issue M. How should the effluent limitations be calculated for municipal wastewater and industrial discharges?); see Staff Report, App. N (Wastewater and Industrial Discharges), App. R (Economic Analysis), App. K (Responses to External Peer Review).

Letter: CVCWA1, Pg5, P3	COMMENT	Excerpt: 12	Type: BAFs
<p>With regard to the legal question, it is instructive to examine the evolution of the use of BAFs in application to the regulation of mercury at both the federal and State levels. In 2000, USEPA adopted mercury water column standards for California as an element of the California Toxics Rule (CTR), using bioaccumulation factors in reaching that determination. In 2010, USEPA revisited national mercury objectives – at that point, EPA decided to adopt the national mercury standards as fish tissue standards (0.3 mg/kg wet weight, based on an assumed consumption rate of 17.5 grams per day)[see Appendix O of SED/staff report]. Notably, EPA refrained from taking the step of converting those fish tissue standards into water column standards through the application of BAFs, in large part due to the recognition that the determination and use of total mercury BAFs was unnecessary. Indeed, EPA’s 2010 Guidance specifically states, “A state or authorized tribe could decide to develop TMDLs and to calculate WQBELs in NPDES permits directly without first measuring or calculating a BAF.” (2010 Guidance, §3.1.2 at p. 21.)</p>			
<p>Response: The comment correctly notes U.S EPA issued a methylmercury objective in 2001 that was expressed as a fish tissue value rather than a water column value and affirmed that approach with its 2010 national mercury standards. And while U.S. EPA refrained from adopting national bioaccumulation factors to derive a national recommended section 303(a) water concentration-based ambient water quality objective, U.S EPA’s guidance explains that its rationale was not because they are unnecessary but because such a national bioaccumulation factor would be based on all ecosystems and would be used to derive a national objective. (U.S. EPA 2010 Guidance, § 3.1.3.1.3.) U.S. EPA recognized that such a national value “might significantly over- or underestimate site-specific bioaccumulation.” (Ibid., p.34; Staff Report, App. I, at p.1 (discussing U.S. EPA’s national bioaccumulation factors).) U.S. EPA’s 2010 guidance nevertheless contains draft national bioaccumulation factors and suggested that states could utilize them but instructed that states should also consider “whether more recent data and/or date that</p>			

are more reflective of local conditions are available to supplant or supplement the limited database used to derive the draft national BAFs.” (U.S. EPA 2010 Guidance, § 3.1.3.1.3, pp.34-35.)

The procedures contained in U.S. EPA’s guidance to develop permit limits and total maximum daily loads without using a water column translation of the fish tissue objective “assumes” that the water column translation of the objective is “not available at the time of permit issuance.” (Id., § 7.5, p.103.) The Staff Report contains the scientifically defensible bioaccumulation factors and the method to derive the water column translation values contained in the Provisions. (Staff Report, App. I (Calculation of the Water Column Targets), App. S (Response to the External Peer Review); see also Staff Report Sections 6.12 and 6.13.)

Also, Please see Response to Comment CVCWA1-12.

Letter: CVCWA1, Pg6, P1	COMMENT	Excerpt: 13	Type: BAFs
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In California, recent regulatory actions support the decision against using the BAF approach for translating fish tissue standards into water column concentration objectives. These examples come from the San Francisco Bay and Sacramento-San Joaquin Delta mercury TMDLs, which were approved by the State Water Board in 2007 and 2011, respectively. Notably, in neither case did these TMDLs convert fish tissue objectives into water column targets through the use of BAFs

Response: Table I-6 in Appendix I of the Staff Report list ten water column mercury or methylmercury targets from TMDLs and Criteria, adopted by the Water Boards between 2004 and 2012. Four of the ten used BAFs to calculate water column targets, including the most recent TMDL adopted in 2012 (LA Lakes TMDL). Three of the TMDLs and criteria used linear regression models to calculate water column targets and Sulfur Creek estimated the natural background to set water column targets. Only the San Francisco Bay TMDL and the Clear Lake TMDL do not include water column targets. San Francisco Bay and Clear Lake are somewhat unique in that they both have very heavy mercury loads from non-point sources, namely mining and sediment loads that are the remnants from mining activities. Clear Lake did not use BAFs or a regression analysis because they do not have non-storm water NPDES point sources, so methods to determine effluent limits for point-sources was not applicable. San Francisco Bay chose not to conduct a thorough analysis of point source contributions since they made a determination that the majority of the mercury load was coming from the huge sediment load in the bay or from loads flowing into the bay from the Central Valley. San Francisco Bay is a unique waterbody in terms of the sediment load containing large amounts of mercury and should not be used as an example of how to conduct a TMDL or in determining relative contributions. All other mercury TMDLs either used BAFs or a regression analysis. While a regression analysis is allowed by the provisions, a regression analysis requires site-specific data and is not amenable to setting statewide effluent limits. Clearly, based on the number of TMDLs and site-specific criteria that use BAFs to determine the water column targets in California, regulatory actions support the use of BAFs.

Chapter IV.D.2.b.1) of the Provisions state that, “the Permitting Authority may develop a site-specific water column concentration value (C) by utilizing a site-specific bioaccumulation factor, linear regression model, or peer-reviewed model, derived from a study of a receiving water downstream of the discharge.” Therefore, other options are available if a discharger believes that the default BAF is not appropriate for that

waterbody.

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Letter: CVCWA1, Pg6, P2	COMMENT	Excerpt: 14	Type: No basis for using BAFs
These examples are provided to clearly illustrate the point that the use of BAFs is not legally required under the CWA, and were not deemed appropriate from a policy standpoint. These examples also raise other considerations, as discussed below.			
There is no scientific consensus regarding the validity of the use of BAFs as proposed in the Mercury Provisions As noted above, probably the best California-specific evidence that BAFs are not well supported by science is the fact that neither the San Francisco Bay Mercury TMDL nor the Delta Methylmercury TMDL utilize a total mercury BAF (i.e. a multiplier that relates fish tissue concentrations to total mercury in the water column) as part of the TMDL implementation plan.			
Response: Please see Response to Comment CVCWA1-11. In addition, the use of BAFs was considered during peer review of the Provisions. One of the peer reviewers, Marc Beutel, Ph.D., PE., stated, “the logic that since ionic mercury can be transformed to methylmercury in receiving waters, total mercury should be the focus on the water column target, is sound. The rationale for making the water column target the same as the effluent limitation is also clearly described in the Staff Report. As detailed in Section 6.12.3...”			
OEHHA reviewed the U.S. EPA bioaccumulation factors and compared those bioaccumulation factor to California data to see if the U.S. EPA bioaccumulation factors are appropriate for California waters. OEHHA published their results titled <u>Evaluation of Bioaccumulation Factors and Translators for Methylmercury</u> , March 2006. The executive summary states, “OEHHA found that U.S. EPA’s methods and results met their goal of developing BAFs and translators that were broadly applicable, especially for lentic and lotic water bodies.” The executive summary goes further to say, “Examining data exclusively from California water bodies was an important step in evaluating whether BAFs and translators were applicable to California since the source of mercury in much of California has been legacy mercury and gold mining, and because environmental conditions in California water bodies may be different than in other areas in the U.S. EPA database. OEHHA			

recalculated California BAFs using the SWRCB California database. OEHHA also calculated translators for some forms of mercury using data available in this database...OEHHA developed BAFs for organisms in lotic environments and demonstrated that they were very similar to the U.S. EPA BAFs.” OEHHA concluded that, “Translators developed from the SWRCB California data were also similar to the U.S. EPA translators.” Finally, “OEHHA was able to test the U.S. EPA national translators and BAFs to see if they accurately predicted mercury levels in fish for several California lotic water bodies by using the SWRCB California database. OEHHA found that the national values predicted California values very well (*i.e.*, no statistical difference between measured and predicted mercury concentration) except for some water bodies where mercury concentrations in water were statistically higher.”

Letter: CVCWA1 , Pg6, P4	COMMENT	Excerpt: 15	Type: Inappropriate in using BAFs
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Because the U.S. Environmental Protection Agency (US EPA) had advocated the use of BAFs in its 2001 Human Health guidance, this concept was considered, but not implemented for either TMDL. This is because evaluation of the relationship between total mercury concentrations in ambient waters showed no meaningful correlation with the levels of mercury in fish tissue. This conclusion led US EPA to revise its recommended approach for developing human health water quality objectives in 2010, wherein US EPA specifically rejected the BAF approach. According to the 2010 Human Health Guidance:

Assessing and predicting methylmercury bioaccumulation in fish is complicated by a number of factors that influence bioaccumulation. These factors include the age or size of the organism; food web structure; water quality parameters such as pH, DOC, sulfate, alkalinity, and dissolved oxygen; mercury loadings history; proximity to wetlands; watershed land use characteristics; and waterbody productivity, morphology, and hydrology. In combination, these factors influence the rates of mercury bioaccumulation in various—and sometimes competing—ways. For example, these factors might act to increase or decrease the delivery of mercury to a waterbody, alter the net production of methylmercury in a waterbody (through changes in methylation and/or demethylation rates), or influence the bioavailability of methylmercury to aquatic organisms. Although bioaccumulation models have been developed to address these and other factors for mercury, their broad application can be limited by the site- or species-specific nature of many of the factors that influence bioaccumulation and by limitations in the data parameters necessary to run the models. (2010 Human Health Guidance, §3.1.3.1 at p. 26.)

Response: Please see Response to Comment CVCWA1-13. Additionally, the document referenced in the comment, Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, dated April 2010, does acknowledge that there are some complications with assessing the methylmercury bioaccumulation in fish. The document goes on to say, “However, a substantial portion of the variability in bioaccumulation for nonionic organic chemicals can be reduced by accounting for lipid content in tissues and organic carbon content in water and “normalizing” BAFs using these factors (Burkhard et al. 2003; USEPA 2003). Normalizing to the age or size (length, weight) of fish has been shown to reduce variability in measures of bioaccumulation (Brumbaugh et al. 2001; Glass et al. 2001; Sonesten 2003; Sorensen et al. 1990; Wente 2004).”

Rather than rejecting the BAF approach, the document says, “Taking into account the previous discussion, EPA has outlined in this document three different approaches that could be considered for relating a concentration of methylmercury in fish tissue to a concentration of methylmercury in ambient water, should a state decide to develop or implement its standard in this manner: 1. Use site-specific methylmercury

BAFs derived from field studies. 2. Use a scientifically defensible bioaccumulation model. 3. Where appropriate, use BAFs derived using the results of field studies that are not site-specific.”

Table 1a in the Executive Summary of that document outlines U.S. EPA recommendations, which are that states and authorized tribes adopt a methylmercury criterion expressed as a fish tissue value. When adopting a fish tissue criterion, states and authorized tribes will need to decide whether to implement the fish tissue criterion without water column translation, or translate the fish tissue criterion to a water column value using bioaccumulation factors (BAFs).

EPA continues to promote the use of BAFs to develop water column translators. In January 2016 EPA published, Development of National Bioaccumulation Factors: Supplemental Information for EPA’s 2015 Human Health Criteria Update. This document describes the procedures and calculations EPA used to compute the national bioaccumulation factors (BAFs) that were, in turn, used to calculate the Agency’s updated national recommended water quality criteria for human health for 94 chemicals.

Letter: **CVCWA1, Pg7, P1**

COMMENT

Excerpt: 16

Type: Consequences of using BAFs

Use of BAFs Lead to Unintended and Inappropriate Consequences

A consequence of using BAFs to create water column values is that it facilitates the application of these water column numbers in the NPDES permitting process. The unintended consequence of this action is to lose track of the importance of NPDES sources to fish tissue concentrations at the watershed level, and instead to focus on an end-of-pipe approach to NPDES permitting. Whereas holistic assessment of mercury sources (as is developed under a TMDL framework) provides a clear picture of the relative importance of NPDES sources to fish tissue levels and provides context for establishing reasonable regulatory requirements, the end-of-pipe permitting approach fails to recognize or account for the relative importance of a permitted source. This leads to the situation, as described in the staff report, where significant treatment requirements are anticipated for municipal and industrial point sources, even though those sources are recognized to be minor in the same staff report on page 146.

Response: Please see Response to Comment CVCWA1-11. The Clean Water Act and its implementing regulations direct that the discharges be evaluated for a potential to cause or contribute to a water quality standards exceedance. However, for water bodies with relatively high inputs of mercury, total maximum daily loads should be implemented to analyze the sources and loading capacity to develop appropriate permit limits. Where cumulative loads from non-point sources (e.g., atmospheric deposition, legacy mines), a total maximum daily load provides the best basis for developing the appropriate permit limits. The Provisions (Chpt. IV.D.2.d.4) and the SIP (Chpt. 2) both recognize that in appropriate circumstances the permit may include a compliance schedule to account for the development of a total maximum daily load.

The Staff Report (Section 6.12.3) does not appear to broadly recognize the municipal and industrial point sources are minor. On page 144, the Staff Report states: “Another disadvantage is that this option could create unnecessary requirements for effluent limitations for some dischargers. This is because un-impaired waters still have assimilative capacity, so the mercury currently in the discharge might be acceptable or

insignificant, depending on the circumstances.” To account for that scenario, the Provisions (Chpt. IV.D.2.c(2).) provides that the permitting Water Board may apply a dilution credit when calculating effluent limitations.

The Staff Report (p. 151) acknowledges that such point sources “are generally a relatively minor source of mercury to the environment compared to other sources.” The Staff Report (See Chapter 4.4, and appendices E, and F) explains that such other sources may be legacy mining and atmospheric deposition. However, after evaluating the relative sources of mercury identified in total maximum daily loads established for mercury in California, the Staff Report also provides, “If this information is used to extrapolate relative source contribution to the state as a whole, then for any watershed without historic gold or mercury mining, wastewater and industrial dischargers can be a significant source of mercury.” (Staff Report, App. N, Section N.2.1.)

Letter: CVCWA1 , Pg7, P2	COMMENT	Excerpt: 17	Type: Minor Hg contribution from POTWs
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Information developed for the Delta Methylmercury TMDL highlights this point. As shown in Figure 1, NPDES sources are very minor contributors to the overall mercury mass balance in the Delta. Further, those sources will decrease over the next few years due to other NPDES permit requirements which have mandated increased levels of treatment at major treatment facilities (SRCSD and City of Stockton).

Response: Please see Response to Comment CVCWA1-16.

The Staff Report acknowledges the ongoing mercury control actions implemented as a result of the development of total maximum daily loads for mercury. In recognition of that effort, the implementation required by the Provisions (Chpt. IV.D.1) expressly do not apply to dischargers for which a mercury total maximum daily load is established with respect to the same beneficial use for which the total maximum daily load was established. The Delta is recognized as a unique water body type and for mercury is the receiving water for much of the land that was mined for gold and where mercury was used for ore processing. This has led to an extreme case where legacy loads dwarf other loads in the system. This is not true for the entire state. Much of the state, outside of the gold and mercury producing areas, do not have the high legacy loads that are in the Delta. For example the recently U.S. EPA established Lakes TMDL (http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/Established/Lakes/LALakesTMDLsEntireDocument.pdf) finds that atmospheric deposition and pumped water are the highest sources.

Letter: CVCWA1 , Pg7, P2	COMMENT	Excerpt: 18	Type: BAFs
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Figure 1 shows that requiring point source dischargers to install new, very expensive, treatment processes to further remove such miniscule amounts of mercury from their effluent would make no measurable impact on levels of mercury in fish in the Delta. However, use of BAFs as the first step in an NPDES permitting sequence, in combination with anticipated future subsistence fishing use designations and associated mercury fish tissue objectives, would require such action. This course is neither reasonable nor prudent, and we urge the State Water Board to reject it.

Response: Please see Responses to Comments CVCWA1-11, 12, 16 and 17.

Letter: CVCWA1 , Pg7, P3	COMMENT	Excerpt: 19	Type: BAFs
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It should also be pointed out that the use of BAFs to create surrogate water column values for mercury only affects NPDES sources through the issuance of effluent limitations. As seen in the remainder of the implementation plan in the proposed mercury provisions, other far more

significant sources, would not be affected by the decision to use BAFs as stated in the proposed policy. This further brings into question the policy choice to use total mercury BAFs as an element of the proposed implementation plan. As described below, if changes are made to the implementation language, the use of BAFs will not be necessary for NPDES permitting purposes.

When the US EPA revisited nationwide mercury objectives and appropriate implementation, they concluded that fish tissue standards were more appropriate for mercury criteria development to avoid the potentially unintended consequences, described above, as well as to more “closely tie” the “fishable designated use goal” to specific waterbodies, to more consistently relate applicable fish tissue concentration values with how fish advisories are issued, and because at environmentally relevant concentrations, some forms of mercury are easier to detect in fish tissue than in water samples. (See, Human Health Guidance, §3.1.2.2 at p. 22.)

Response: The Provisions adopts the recommended fish tissue concentration as the water quality objective, as recommended by U.S. EPA. The use of BAFs, or other methods, to relate water column concentrations to fish tissue is also recommended by the 2015 EPA guidance document for implementing the fish tissue objectives. Unlike U.S. EPA, California adopts implementation programs to assist permit writers and permittees we have used the recommended method of using BAFs to translate the fish tissue to water column concentrations. The Provisions also allows for site-specific BAFs, models methods to be used where the established BAFs may be inappropriate. The other methods of determining reasonable potential are expensive and may not be desirable in places where tertiary treatment plants are already discharging low levels of mercury.

Also, Please see Responses to Comments CVCWA1-11, 12, 15, 16 and 17.

Letter: CVCWA1 , Pg8, P1	COMMENT	Excerpt: 20	Type: RPA determination
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Determination of Reasonable Potential

With the establishment of new fish tissue objectives to protect the proposed three new beneficial uses, the obligation exists under USEPA CWA regulations (40 CFR 122.44) to evaluate whether NPDES-permitted discharges have the reasonable potential to cause or contribute to violations of those objectives. If “reasonable potential” is determined to exist, effluent limitations are to be included in NPDES permits to implement the subject fish tissue objectives.

Response: The comment accurately paraphrases the cited regulation.

Letter: CVCWA1 , Pg8, P2	COMMENT	Excerpt: 21	Type: Recommendation of replacing BAFs
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As an alternative to the proposed implementation language in the Mercury Provisions, which relies on the use of BAFs to determine surrogate water column values and would modify Steps 1 through 5 of the existing NPDES reasonable potential analysis procedures (Section 1.3 of the State Implementation Policy (SIP)), we recommend that changes to Step 7 of Section 1.3 should be made. Step 7 allows for the consideration of “other information” in reaching a reasonable potential determination. This step in the process does not rely on the creation of surrogate water column values through the use of BAFs to interpret fish tissue objectives. In cases where TMDLs have already been approved and implemented, significant information exists which should guide the reasonable potential determination.

Suggested changes to Step 7 of the SIP reasonable potential procedures are included in Attachment B.

Response: The comment proposes that the water column concentration values be removed from the Provisions and not include an empirical method to conduct the reasonable potential analysis but that consideration instead be made of “other information” as to whether an existing TMDL should guide the reasonable potential determination. The Provisions does not supersede existing TMDLs and would have no impact on reasonable potential determination for dischargers with an assigned waste load allocation. In addition future TMDLs may be developed for any water body in the state, even if not listed on the CWA 303(d) list of impaired waters, to inform permitting decisions. The development of a TMDL is often a data intensive and time intensive endeavor. The Provisions provides a reasonable method for determining reasonable potential and effluent limits based on BAFs where data is limited. See response to WSPA2-54 and 61.

Steps 7 and 8 in the SIP are provisions to ensure the Regional Board consider other information that may indicate the discharge has reasonable potential where application of the prior steps do not reach that result.

Additionally, revisions have been made to the the implementation chapter in the Provisions to clarify the approach a Regional Board may take with respect to an existing or developing TMDL for mercury.

Letter: CVCWA1, Pg8, P4	COMMENT	Excerpt: 22	Type: Reasonable Potential Recommendation
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The State Water Board staff has recognized the minor (*de minimis*) nature of municipal and industrial point source dischargers to the mercury loading of many state waters in its staff report, and has proposed an exception for so-called, “insignificant discharges.” While recognizing that many municipal and industrial point sources are indeed “insignificant discharges” to the overall mercury loading in any given water body, the State Water Board should state that, where, on a case-specific basis, that municipal or industrial point sources are determined to be *de minimis* (or insignificant) contributors of mercury, the permit writer would have discretion to determine that no reasonable potential exists to cause or contribute to water quality excursions, and thus not impose effluent limitations for mercury.

Response: The classification of insignificant discharges applies to discharges determined to be of very low threat to water quality and not just with regards to mercury but with regards to all pollutants. It is not a recognition that municipal discharges are insignificant to the overall mercury loading in any given water body. There are however, exceptions for establishment of effluent limitations if the municipal discharge originates from a POTW that serves a small disadvantaged community or if the industrial discharge has been determined to be low threat to water quality.

Letter: CVCWA1, Pg8, P5	COMMENT	Excerpt: 23	Type: Reasonable Potential
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The suggested amendments to Step 7 of the SIP should allow the Regional Board permit writer to consider the relative mercury loading of a given discharger to a water body and, where appropriate, determine that there is no “reasonable potential” that would require the more restrictive water column concentration effluent limits. These determinations would not be mandatory but, rather, would provide sufficient discretion to the permit writer to utilize all appropriate data when determining whether new and more restrictive mercury WQOs should be imposed.

Response: The mercury Provisions already include specified reasonable potential steps to allow the Regional Board to determine reasonable potential based on the applicable mercury water column values. The Reasonable Potential analysis has to comply with the SIP, and just

<p>following step 7 of the SIP for Reasonable Potential as modified would not properly implement the protection of the proposed human health fish tissue water quality objectives. In addition, the Provisions also already includes specified exceptions to Reasonable Potential Analysis.</p>			
Letter: CVCWA1, Pg8, P6	NOT COMMENT	Excerpt: 24	Type: Effluent Limits
<p>Development of Effluent Limitations</p> <p>Where a determination is made that effluent limitations are required because a discharge has reasonable potential to cause or contribute to a violation of fish tissue objectives for mercury, the implementation language in the proposed Mercury Provisions should describe an approach to the establishment of effluent limitations. The proposed Mercury Provisions put forward an approach that relies on the use of BAFs and water column values.</p> <p>We recommend that an alternative approach be followed, as described below, consistent with past State Water Board and NPDES permitting approaches used in San Francisco Bay, and with legal precedent as described in <i>Communities for a Better Environment vs. State Water Resources Control Board</i> (2005) 132 Cal.App.4th 1313 (“CBEII”). This alternative approach intentionally avoids the use of BAFs and the associated problems as described above.</p> <p>Response: Comment noted and response to each alternative is provided in comments below.</p>			
Letter: CVCWA1, Pg9, P32	COMMENT	Excerpt: 25	Type: Effluent Limits
<p>The recommended alternative approach to effluent limitations includes three elements, as described below and as captured in the markups shown in Attachment B:</p> <ul style="list-style-type: none"> • Interim Limitations – In water bodies where mercury TMDLs have been adopted and implemented, existing WLAs should serve as interim effluent limitations for point sources until amended TMDLs are developed and adopted. In water bodies where TMDLs are not yet adopted, but reasonable data confirm that point sources are <i>de minimis</i> contributors of mercury to the water, interim effluent limitations for point sources should be performance based mass limits, intended to cap mercury mass loads until 303(d) listings and/or TMDLs have been adopted. <p>Response: The Staff Report Section 2.4 page 13 indicates that where TMDLs for the same beneficial use or water quality objective under evaluation have been approved, the discharges should comply with the TMDL requirements and the Provisions does not apply. So the existing WLAs or other requirements under the TMDL would apply instead. For point sources to waterbodies where TMDLs have not been adopted, the Provisions specifies that effluent limits would only apply if there is reasonable potential to exceed the water column values, but it also allows for calculation of site-specific water column values, that could be implemented under a time schedule, and therefore no need for interim limitations. Additionally, if a water body is designated for either T-SUB or SUB the water boards could establish site-specific objectives, as the Provisions recommends, and at that time develop extended time schedules and interim limits for the potentially more stringent effluent limits. Additionally, revisions have been made to the the implementation chapter in the Provisions, on the calculation of effluent limitations, to clarify the approach a Regional Board may take with respect to an existing or developing a new TMDL for mercury.</p>			

See response to WSPA2-54 and 61.			
Letter: CVCWA1, Pg9, P34	COMMENT	Excerpt: 26	Type: TMDLs
<ul style="list-style-type: none"> Other interim requirements – In water bodies where TMDLs have been implemented, dischargers shall be required to continue to implement the requirements of those TMDLs. In addition, dischargers shall be required to participate in stakeholder processes to identify and assess the feasibility of control measures and strategies to reduce the major sources which are influencing fish tissue concentrations in the subject water body and to otherwise support development of future TMDLs. In water bodies where TMDLs have not been adopted, dischargers should be required to demonstrate implementation of best practices for mercury source control, including pollution prevention and industrial pretreatment. In addition, dischargers should be required to participate in stakeholder processes to identify and assess the feasibility of control measures and strategies to reduce both the major sources which are influencing fish tissue concentrations in the subject water body, as well as potential risks to consumers of fish, and to otherwise support development of future TMDLs. 			
<p>Response: The Provisions does not supersede any existing Mercury TMDLs established to the beneficial uses designated for the water bodies. Likewise, future TMDLs and their implementation requirements would not be superseded by the Provisions. (See Staff Report Chapter 3.10) The Provisions allows for the development of TMDLs for impaired waters and the Clean Water Act at section 303(d)(3) recognizes the utility of developing TMDLs for all waters to inform permitting decisions.</p>			
Letter: CVCWA1, Pg9, P35	COMMENT	Excerpt: 27	Type: Interim limit/requirements
<ul style="list-style-type: none"> For interim limitations or requirements, long-term averages, such as annual averages, should be used rather than short-term averages, such as weekly or monthly averages. 			
<p>Response: Comment noted. The Provisions uses annual averages for the COMM, Sub and T-SUB beneficial uses and a seasonal average to protect wildlife that consumes fish. The proposed effluent limits in the Provisions are annual averages to allow for the potential variability in the effluent. (See Staff Report Chapter 6.13.3)</p>			
Letter: CVCWA1, Pg9, P36	COMMENT	Excerpt: 28	Type: Final WQBELs
<ul style="list-style-type: none"> Final WQBELs – Final WQBELs may be the WLAs developed under future TMDLs associated with future designated beneficial uses and associated fish tissue objectives. Alternatively, final WQBELs could be determined using one of the methods described in USEPA TMDL guidance for establishing WLAs. Such methods provide flexibility to take various factors, including relative source load contributions and existing control measures into account in the establishment of WLAs. 			
<p>Response: The Provisions does not govern the development of future TMDLs. As future TMDLs are developed the Regional Water Boards can choose to develop effluent limits based on waste load allocations. Many of the current TMDLs have taken this approach.</p> <p>In addition, the Provisions have been revised to account for existing TMDLs to allow for effluent limitations to be calculated based on existing mercury TMDLs and the development of new mercury TMDLs.</p>			
Letter: CVCWA1, Pg10, P1	COMMENT	Excerpt: 29	Type: Hg WQO Implementation

MC-2: Implementation of Mercury Water Quality Objectives – Assignment of Mercury Abatement Responsibility to State Agencies

California’s regulatory and public health agencies have long been aware that fish and other aquatic-dependent wildlife are at risk for bio-accumulating methylmercury. In some instances, higher trophic (larger) fish contain elevated levels of mercury in fish tissue that are consumed by humans, leading to fish consumption advisories by public health agencies. Over the past 15 or so years, considerable information about sources of mercury, control strategies, risk reduction and communication, and the underlying ability to achieve significant reductions in fish tissue mercury levels has been developed by Regional Boards. In some cases, these efforts have resulted in the development of TMDL budgets and plans for achieving reductions in the amount of mercury loading to those water bodies.

An important result of the studies and work leading up to Mercury TMDLs in various parts of the state is the recognition that traditional “point sources” - municipal and industrial wastewater treatment facilities – are considered to be an extremely small portion of the ongoing load of mercury to state waters. The *de minimis* nature of these point source contributions to ongoing mercury loading can be traced to aggressive pre-treatment, pollution prevention, and active treatment technologies over the past two decades. Indeed, municipal and industrial dischargers combined account for only about 1.4 percent of the ongoing mercury loading to San Francisco Bay. Planned NPDES loads to the Delta based on current permit requirements will represent less than 0.1 percent of the methylmercury load in 2030.

By comparison, open water, tributaries and existing wetlands are known to account for about 93.8 percent of ongoing mercury loading in the Delta. In San Francisco Bay, over 75 percent of the ongoing loading of mercury is coming from the Central Valley watershed, natural bed erosion, and atmospheric deposition. In both instances, the Regional Boards have struggled to find effective means of controlling these “untethered” sources of most of the mercury continuing to be taken-up by fish and other biota in the waters.

In 2010, the Central Valley Regional Board took the unprecedented step of assigning responsibility for open water and tributary sources of mercury to those State of California and federal agencies responsible for managing the land and water from which these mercury loads are derived. In its 2010 Delta Methylmercury TMDL, the Central Valley Regional Board specifically found that transportation and deposition of mercury-contaminated sediment from water management activities contribute to the Delta fish mercury impairment.

Specifically, the Regional Board determined that the State and Federal Water Projects affect the transportation of mercury and the reduction and transportation of methylmercury. Activities including water management and storage in and upstream of the Delta and Yolo Bypass, maintenance of and changes to salinity objectives, dredging and dredge materials disposal and reuse, and management of flood conveyance flows are subject to the open water methylmercury allocations. Agencies responsible for these activities in the Delta and Yolo Bypass include, but are not limited to, the Department of Water Resources, State Lands Commission, Central Valley Flood Protection Board, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers (USACE), and State Water Resources Control Board. The Regional Board also determined that the State of California owns and manages lands and waters of the state that contribute to methylmercury loads. As a result, the State Lands Commission and Department of Water Resources were also assigned responsibility for addressing these mercury contributions to the overall fish

impairment.

Response: Commented noted. Section 4.4 of the Staff Report contains additional information and discussion of sources of mercury other than dischargers. Unlike a TMDL the provisions of a water quality standard to not assign “Assignment of Mercury Abatement Responsibility” instead it provides a program of implementation, and where necessary new regulations, to achieve the objectives. The State has the authority to require mercury reductions for any discharge or threatened discharge of mercury into the environment and can use existing tools including clean-up and abatement orders, CWA 401 certifications and WDRs to require reductions. It is not possible to determine where reductions by state agencies would be necessary outside of where TMDLs have been established. Future TMDLs may identify other state agencies as sources and require implementation as appropriate.

Letter: **CVCWA1, Pg11, P42**

COMMENT

Excerpt: 30

Type: Delta MeHg

Pursuant to the Delta Methylmercury TMDL, the state and federal agencies named as responsible parties must take the following actions:

- Characterize their projects’ effects on ambient methylmercury and total mercury concentrations and loads in the Yolo Bypass and Delta;
- Conduct methylmercury and total mercury control studies to evaluate options to reduce methylmercury production in open waters under jurisdiction of the State Lands Commission and floodplain areas inundated by managed flood flows; and
- Minimize to the extent practicable any methylmercury and/or total mercury loading to the Delta and Yolo Bypass resulting from new and existing projects using feasible management practices that are not in conflict with salinity standard or other mandates (e.g., minimum flow and temperature mandates).

Assigning state and federal agency responsibility for mercury loads coming from land or projects over which these agencies have responsibility is reasonable, fair, and just. Without doing so, there is literally no hope of successfully abating mercury in fish from some California waters. Holding these state and federal agencies responsible is consistent with existing laws, regulations and authorities of the State and Regional Water Boards.

If the State Water Board intends to do everything reasonably possible to address mercury impairment of California’s waters and the fish taken from them by tribal, subsistence and sport fishers, it is now time to assign responsibility for reducing ongoing mercury loading to the extent feasible to those state and federal agencies who own, operate, use or lease land and water projects that contribute to mercury to the systems. The State of California should also be asked to step forward to lead the public messaging and communication efforts to manage the risk from exposure to mercury in fish to women of child bearing age, children and other consumers of locally caught fish.

Response: The Provisions does not assign responsibility for reductions in mercury to specific parties. Instead it provides tools to reduce the transport of mercury into water bodies and establishes a methodology for determining reasonable potential for point source dischargers to aid in permit development. See Chapter 4 and 7 of the Staff Report for a discussion of mercury sources and reasonably foreseeable methods of compliance. The recommendations would be appropriately included in future TMDLs.

The Delta is a unique waterbody and should not be used as a model for other TMDLs throughout the state, see CVCWA1, Excerpt 13.

The Staff Report does consider options for reducing mercury and methylmercury from the various sources in Chapter 6. State and federal agencies have direct regulatory authority and responsibility for mercury sources, including mine sites and mining waste, dredging projects, wetlands, other non-point sources, and NPDES stormwater. Options for controlling these sources are considered in Sections 6.9, 6.10, and 6.11 of the Staff Report. Requirements for municipal stormwater are included in IV.D.3.b. of the Provisions. Requirements for mine site remediation are included in IV.D.4 of the Provisions. Chapters IV.D.5, 6, and 7 of the Provisions affirm that the Permitting Authority has regulatory to include requirements for reducing mercury and methylmercury loads to water.

Letter: CVCWA1, Pg11, P45	COMMENT	Excerpt: 31	Type: No Guidance
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MC-3: Guidance to Regional Water Boards regarding Designation and Implementation of Proposed Beneficial Uses

The State Water Board should provide direction to Regional Water Boards in the following areas regarding the designation and implementation of the three new beneficial uses:

- How new beneficial uses should be designated in specific water bodies, including criteria for making this determination and a process for collecting, utilizing and interpreting fish consumption information;

Response: Please see Response to Comment WSPA2-8 and references contained therein.

Letter: CVCWA1, Pg11, P46	COMMENT	Excerpt: 32	Type: Identify significant & insignificant source
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- How to identify significant and insignificant sources, including generation and consideration of information regarding the relative contribution of sources, with an emphasis on information developed as an element of an existing TMDL or through a TMDL-like analysis, and including legacy impacts associated with sediments flux, air deposition sources and other non-point source contributions; and

Response: The components of the Provisions are designed to develop specific Mercury Water Quality Objectives, designation of beneficial uses, and implementation of the Mercury Water Quality Objectives through existing state and federal law and regulations. A “TMDL-like analysis” is not required unless a TMDL is established. The requirements for the Regional Water Boards to identify significant and insignificant sources of mercury are included in the existing TMDL regulatory programs, when the Regional Water Boards develop a TMDL

In addition, Please see Responses to Comments WSPA2-54 and 61.

Letter: CVCWA1, Pg12, P47	COMMENT	Excerpt: 33	Type: Hg WQOs Implementation
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- The need to convene key stakeholders (tribes, subsistence fishing community, regulated community, State of California) as an element of the designation process and to address adoption and implementation of water quality objectives for designated uses. Considerations should include the full range of possible management measures and effectiveness, with the purpose of developing a common understanding of problems and potential solutions.

Response: In addition to the targeted stakeholder outreach, staff held two public workshop and several meetings with interested parties to discuss the Provisions. Also, Please see Responses to Comment CVCWA1-34 below, which points to Attachment C of the letter.

Letter: CVCWA1, Pg12, P48	NOT COMMENT	Excerpt: 34	Type: Summary
Suggested language for a State Water Board resolution is included as Attachment C to this letter.			
Response: Comment noted.			
Letter: CVCWA1, Pg12, P49	COMMENT	Excerpt: 35	Type: BU/Designation
MC-4: Clarification of Language in Beneficial Use Definitions			
<p>CVCWA remains concerned about the lack of limitations for the Tribal Tradition and Culture Use (CUL). Once a beneficial use is established and applied to a specific waterbody, that use must be protected, maintained, or attained where attainment does not currently occur. The proposed CUL use definition in the Staff Report provides no limitations as to how and when the use should be applied. This use currently includes “uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.” It is difficult to see how this use could be protected, given that many of California’s waterbodies have been highly modified over the years. This use should be revised with reasonable limitations, taking into account other factors, such as other uses of water, attainment expectations, and seasonality.</p>			
Response: Any designation of a water body with a beneficial use will be subject to a public participation process where information about the specific use and how it should best be protected will be presented and evaluated. This public process allows for discussion of how issues raised in this comment can be dealt with. Additionally, Please see Response to Comment WSPA2-13.			
Letter: CVCWA1, Pg12, P50	COMMENT	Excerpt: 36	Type: BU/Designation
<p>As has been discussed with your staff, concern exists regarding an element of the T-SUB and SUB beneficial uses definitions. The definitions for Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) both contain the word “individuals.” The concern is that there may be confusion that this term is intended to indicate for any highly exposed individual engaging in the specified use. Use of the term “individuals”, without further clarification or context, may lead to beneficial use designations for entire water bodies based on the activities of a single person. This approach would not be reasonable or feasible.</p> <p>Based on our discussions, we do not believe this is the intent of the State Water Board in using this terminology. We therefore would ask for the addition of clarifying language. Specifically, we suggest the following additions:</p> <p>Footnote to be added in Section II. BENEFICIAL USES.</p> <p>5) Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals [see footnote], households, or communities of California Native American Tribes to meet minimal needs for sustenance.</p> <p>6) Subsistence Fishing (SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish</p>			

and shellfish, for consumption **by individuals [see footnote]**, households, or communities, to meet minimal needs for sustenance.

[Footnote] – In the context of the T-SUB and SUB beneficial uses, the terms “individuals” or “households” are not intended to cover a single individual or single household engaging in these beneficial uses in a given waterbody. A single individual or household engaging in either the TSUB or SUB beneficial use would not be, on its own, a basis for designation by a Regional Board, nor would consumption rates by a single individual or household constitute a reasonable baseline for establishing water quality objectives to protect that use.

This language should also be inserted into the Staff Report at p. 6. (Section 2.3.1) and elsewhere in the report where the T-SUB and SUB uses are referenced.

Response: The term “individuals” in the two subsistence beneficial use definitions qualify who is consuming the fish—not doing the fishing. The term “individuals” also does not appear in the singular form, but plural. Accordingly, the recommended language is not necessary to construe the intent on the number of individuals engaged in fishing would qualify for a water body to be designated with the use. The approach of the subsistence fishing definitions is similar to the beneficial use for commercial and sport fishing, the subsistence fishing beneficial uses are silent as to the extent the fishing is occurring or the number of persons that would be required for a Water Board to appropriately designate the use. The Water Board that has jurisdiction over a particular waterbody is in the best position to evaluate the appropriateness of a designation and is consistent with the long-standing practice. (Staff Report, Section 6.4.3.) “A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).” (Ibid.; see also Staff Report, App. T.4-T.6 (discussing the manner in which designations would occur.)) Finally, the Staff Report (p. 109) provides that it “may not be reasonable to designate a beneficial use [...] if only one individual is using the water in a way that would meet the beneficial use definition.”

With that said, the following has been added to the Staff Report at Section 6.4.2 to ensure the definition’s use of the word “individuals” in each beneficial use would not require a Water Board to designate a water body with that use where evidence indicates only a single individual consumes the fish or catches the fish. However, with respect to a Water Board designating a future goal use, such evidence may be sufficient :

“With respect to designating an existing use with the T-SUB or SUB beneficial use, the terms “individuals” or “households” are not intended to cover a single individual or single household engaging in these beneficial uses in a given waterbody and a single individual or household engaging in either the TSUB or SUB beneficial use would not be, on its own, a basis for designation by a Regional Water Board, nor would consumption rates by a single individual or household constitute sufficient evidence for establishing water quality objectives to protect that use. However, such could be the basis for a Regional Water Board to designate the T-SUB or SUB beneficial use as a “probable future” use. Discretion remains with the Water Board in assessing such evidence and rendering a determination to designate with an existing or probable future use.”

Letter: **CVCWA1**, Pg13, P56

COMMENT

Excerpt: 37

Type: UAA

Finally, the Staff Report does not indicate that a Use Attainability Analysis is required for all three proposed beneficial uses, pursuant to

Responses to Comments—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 Mercury Provisions.

federal law. Federal regulations require a use attainability analysis as described in 40 CFR section 131.10(g) when a state designates uses beyond uses specified in Clean Water Act section 101(a)(2). The uses in Clean Water Act section 101(a)(2) are for the protection and propagation of fish, shellfish and wildlife, and provide for recreation in and on the waters, informally referred to as the “fishable-swimmable uses”. The proposed CUL, T-SUB, and SUB beneficial uses are not fishable-swimmable uses, and therefore any designation of such uses may occur only after the Regional Water Board has conducted a use attainability analysis pursuant to 40 CFR section 131.10(g). We recommend that the Staff Report be revised to include the acknowledgement that a use attainability analysis must be conducted before any of the proposed beneficial uses can be designated to a water body and provide guidance to Regional Board in making designation determinations.

Response: The Staff Report does not indicate that a Use Attainability Analysis (UAA) is required for all three proposed beneficial uses because the Provisions contains proposed use categories and definitions and does not provide guidance on the manner in which a Regional Water Board may designate any water body with one of the beneficial uses. Additionally, as a matter of law, the federal regulations implementing the Clean Water Act specify when a UAA is required (40 C.F.R. § 131.10(j) and when a UAA is not required (Ibid., § 131.10(k)). U.S. EPA has further explained: “The CWA distinguishes between two broad categories of uses: uses specified in section 101(a)(2) of the Act and uses specified in section 303(c)(2) of the Act. For the purposes of this final rule, the phrase “uses specified in section 101(a)(2) of the Act” refers to uses that provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life. A “subcategory of a use specified in section 101(a)(2) of the Act” refers to any use that reflects the subdivision of uses specified in section 101(a)(2) of the Act into smaller, more homogenous groups for the purposes of reducing variability within the group.¹⁴ A “non-101(a)(2) use” is a use that is not related to the protection or propagation of fish, shellfish, wildlife or recreation in or on the water. Non-101(a)(2) uses include those listed in CWA section 303(c)(2), but not those listed in CWA section 101(a)(2), including use for public water supply, agriculture, industry, and navigation.” (80 Fed. Reg. 51024 (Aug. 21, 2015).) The three beneficial uses would be construed as tiered or subcategory section 101(a)(2) uses insofar as they pertain to recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life.

Finally, the comment misstates Code of Federal Regulation, title 40, section 131.10(g). Section 131.10(g) does not require a UAA to be performed before a non-fishable-swimmable use may be designated. That section does not distinguish between 101(a) and non-101(a) uses. Section 131.10(g) requires a state to perform a UAA to *remove* a use (that is not an existing use), and does not require a state to perform a UAA when *designating* a use.

Accordingly, the Staff Report will not be revised as requested by this comment.

Letter: CVCWA1, Pg13, P57	COMMENT	Excerpt: 38	Type: BUs
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MC-5: Process for Adoption of Mercury Fish Tissue Objectives

Water Code section 13241 requires Regional Boards (and the State Water Board) to establish water quality objectives that, in its judgment, will ensure the reasonable protection of beneficial uses. In establishing water quality objectives, the following factors (and others) shall all be considered:

- The past, present and future beneficial uses
- The ability to reasonably achieve water quality conditions through coordinated control of all factors which affect water quality in the area
- Economics

The past, present and future beneficial uses

A key consideration is whether the ability to consume fish containing mercury at the levels prescribed in the proposed mercury fish tissue objectives has existed since 1975.

Response: Commenter correctly paraphrases Water Code section 13241, but the conclusion drawn does not follow from the statutory language. When establishing a water quality objective to reasonably protect beneficial uses, section 13241 does not require the Water Board to first determine whether the use is an “existing” beneficial use (i.e., whether the use has occurred and the water quality necessary to support that use has been attained at or after 1975). See Response to Comment WSPA2-38. Furthermore, performing such an analysis would be infeasible given the proposed water quality objectives establish levels to protect the use on all water bodies for which the use has been designated, without performing a specific evaluation of the whether the use is occurring or being attained on any particular water body.

Letter: CVCWA1, Pg13, P58	COMMENT	Excerpt: 39	Type: BUs
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A second key consideration is whether it is likely that such a consumption use is likely to occur in the future. This information has not been considered in the proposed policy or staff report.

Response: Response to Comment CVCWA1-39 equally applies to this comment with respect to the conclusion drawn insofar as Water Code section 13241 does not require evaluation of whether a use may occur in the future at a particular water body to establish a water quality objective to reasonably support a beneficial use. Also, Please see Responses to Comments CVCWA1-36 and WSPA2-38.

Letter: CVCWA1, Pg14, P59	COMMENT	Excerpt: 40	Type: Achieve WQ conditions
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The ability to reasonably achieve water quality conditions through coordinated control of all factors which affect water quality in the area

The staff report supporting the proposed Mercury Provisions does not include such an evaluation. While an implementation plan is included in the proposed policy, the effectiveness of that plan in achieving proposed water quality objectives is not addressed.

Response: The Staff Report includes consideration of all the 13241 factors, see Section 10.1.1 through 10.1.6. While consideration of “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area is a factor the section 13241 requires the Water Board to consider when establishing an objective, commenter’s conclusion does not follow from the statutory language. Water Code section 13241 does not require a Water Board to evaluate the effectiveness of its program of implementation to achieve a water quality objective when the Water Board is establishing the water quality objective. Rather, Water Code section 13242 requires that a program of implementation to achieve water quality objectives contain (a) a description of the nature of actions necessary to achieve the objectives, a time schedule, and a description of required surveillance to determine compliance with the objectives. The Provisions, at Chapter IV., satisfies the requirements of section 13242.

Letter: CVCWA1, Pg14, P61	COMMENT	Excerpt: 41	Type: Economics
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Economics

This requirement goes to the issue of whether required control measures associated with proposed water quality objectives meet the test of providing reasonable protection of beneficial uses. If resources are spent to implement control measures that will never meet the proposed objectives, this is to be considered as part of the process of establishing the objective. While the staff report includes an economic analysis, it does not consider whether control measures and associated costs are reasonable in terms of achieving the desired water quality conditions as reflected in the proposed water quality objectives.

Section 13242 of the Water Code requires that a program of implementation be developed and documented, wherein the control measures necessary to achieve proposed objectives would be identified.

Response: The Staff Report includes consideration of all the 13241 factors, see Section 10.1.1 through 10.1.6. As commenter notes, economic considerations is a factor included in the Staff Report, including an evaluation of costs to wastewater treatment facilities, as Appendix R of the Staff Report. While there is no “reasonable” standard or a balancing test in the 13241 factors, the statutory requirement to include economic considerations when establishing a water quality objective will be evaluated by the State Water Board when it considers whether to adopt the Provisions

Letter: **CVCWA1, Pg14, P63**

COMMENT

Excerpt: 42

Type: Exposure Reduction Program

B. Other Comments

The following other comments address more detailed aspects of the proposed policy and accompanying staff report.

OC -1: Section 6.14 Issue N - Success and responsibility of Exposure Reduction Program should be clarified/corrected.

- This section currently states incorrectly: *“The San Francisco Bay mercury TMDL included a public exposure reduction program that was fairly successful (CDPH 2012). The success of the San Francisco Bay program was partly attributed to the assistance provided by CDPH. However, those resources have not been available for the public exposure reduction program for the Sacramento San Joaquin Delta, and it has been a struggle to put that program into action.”* Correct this statement to indicate that CDPH and other agencies such as the Delta Conservancy were utilized as resources for the Sacramento San Joaquin Delta and recognize that this program is still in progress.

Response: The Staff Report has been changed as recommended in this comment.

Letter: **CVCWA1, Pg14, P64**

COMMENT

Excerpt: 43

Type: Exposure Reduction

- Risk reduction activities associated with the San Francisco Bay mercury TMDL are still ongoing. The first sentence in the above paragraph should be edited to read: *“The San Francisco Bay mercury TMDL includes a public exposure reduction program that is fairly successful (CDPH 2012). The success of the San Francisco Bay program is partly attributed to the initial assistance provided by CDPH.”*

Response: The Staff Report has been changed as recommended in this comment.

Letter: **CVCWA1, Pg15, P65**

COMMENT

Excerpt: 44

Type: Exposure Reduction - Language Recommendation

- Also, remove the indication that the program has been a “**struggle**” to put into action

Response: The Staff Report has been changed as recommended in this comment.

Responses to Comments—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 Mercury Provisions.

Letter: CVCWA1 , Pg15, P66	COMMENT	Excerpt: 45	Type: Exposure Reduction – Language Recommendation
Add <u><i>“The State should participate more in future exposure reduction activities, including participation from agencies such as the Delta Conservancy and the CDPH, with assistance from regulated dischargers and responsible parties.”</i></u>			
Response: It is not useful to request that “the State should participate more”, which Staff interpret as “the State Water Boards should participate more”, without specific direction or suggestion. Staff respectfully request that in the future Commenter provide concrete suggestions for action.			
Letter: CVCWA1 , Pg15, P67	COMMENT	Excerpt: 46	Type: TMDLs
OC-2: Text contained within the staff report is inconsistent with respect to its application to water bodies with existing TMDLs. Recommendation: Use the same text where requirements associated with current TMDLs are mentioned because currently it varies such as:			
<ul style="list-style-type: none"> • Pg xviii: <i>“However, the water quality objectives would not apply to the waters described above where site-specific mercury water quality objectives are established.”</i> • Pg 13: <i>“The Provisions’ program of implementation would apply to the same waters as the Mercury Water Quality Objectives, but the implementation provisions would not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (a mercury or methylmercury TMDL) has been approved.”</i> • Pg 34: <i>“Therefore, the Provisions’ mercury objectives for the COMM and WILD beneficial uses do not supersede the site-specific objectives listed in Table 3-2.”</i> • (SWB Staff should review other sections too for similar but not identical text). 			
Suggested language for inclusion <u>“The Provisions and Water Quality Objectives do not supersede established site-specific water quality objectives, and do not apply to waters for which a mercury TMDL (or other specified contaminant TMDL) has been approved.”</u>			
Also, delete the text on page 40 of the staff report that says: <u><i>“When the Regional Water Boards revisit these TMDLs, if they used 17.5 g/day as a consumption rate, they should consider updating it to 32g/day. This change should not make a substantial difference in the implementation for the reasons just described, but it would make targets more consistent statewide.”</i></u>			
Response: The Staff Report language is not inconsistent. It discusses both site-specific objectives in the first instances and TMDL implementation in the second instance. The commenter’s recommended language is overly broad. The TMDLs that are designed to achieve the COMM or WILD objectives may not be sufficient to protect the SUB or T-SUB beneficial uses should they be designated in the future.			
The Staff Report recommendation is to ensure that older TMDLs, as they are revisited, are potentially revised to ensure protection of beneficial uses consistent with current science. It is not a requirement but a recommendation.			

In addition, the Provisions have been revised to include a discussion on existing and future mercury TMDLs. Also, Please see Responses to Comments WSPA2-54 and 61.			
Letter: CVCWA1, Pg15, P72	COMMENT	Excerpt: 47	Type: TMDL
OC-3: Appendix Table C-1 appears to be incomplete. Recommendation: Add “Yes” to Sacramento River (Knights Landing to the Delta) to indicate development of a mercury/methylmercury TMDL for that water body. Other water bodies may also need an updated status.			
Response: Table C-1 is from the 2012 Integrated report. Additional TMDLs may have been developed that are not represented in the table.			
Letter: CVCWA1, Pg15, P73	COMMENT	Excerpt: 48	Type: Data – Non Detected
OC-4: IV.D.2 Methods, Routine, Monitoring, and Compliance Schedules, Subsection 3. <i>“Compliance Determination: The annual average mercury concentration in the effluent shall be calculated as an arithmetic mean. For any sample reported as below the detection limit, one-half of the detection limit shall be used to calculate the arithmetic mean. For any sample reported as below the quantitation limit and above the detection limit, the estimated concentration shall be used to calculate the arithmetic mean.”</i> DNQ are indicators of presence/absence for RP analysis but should not be used as quantified data. CVCWA recommends that the final draft Implementation of Water Quality Objectives for mercury include reporting protocols similar to those already adopted by Regional Boards for other NPDES permits. ¹ Sample results less than the RL, but greater than or equal to the laboratory’s MDL, shall be reported as “Detected, but Not Quantified,” or DNQ. The estimated chemical concentration of the sample shall also be reported. When determining compliance for multiple sample data and the data set contains one or more reported determinations of DNQ of “Not Detected” (ND), the Discharger shall compute the median in place of the arithmetic mean.			
Response Comment noted, however, as stated in the Provisions Chapter 2.c.1, the annual average concentration is used to account for the long-term nature of the methylmercury bioaccumulation process, which may not otherwise be reflected using a maximum concentration or a median concentration. In addition, DNQs are indicators of presence but not adequate quantification, but certainly not absence and thus it is still appropriate to include the estimated concentration in the calculation to properly assess an annual average. Furthermore, the Provisions includes a consistent calculation procedure for both determining reasonable potential and for compliance determination of an applicable effluent limitation.			
Letter: CVCWA1, Pg16, P77	COMMENT	Excerpt: 49	Type: Methods
OC-5: IV.D.2 Methods, Routine, Monitoring, and Compliance Schedules, Subsection 1. <i>“Methods: For monitoring total mercury in effluent, the discharger shall use any U.S. EPA approved method that has a quantitation limit lower than the effluent limitation.”</i>			

CVCWA recommends further clarification to specify that the discharger shall conduct analysis according to test procedures approved under 40 CFR Part 136. For NPDES dischargers, “The analytical methods specified under 40 CFR Part 136 are required for all monitoring performed under the NPDES Program, unless the permit specifically requires alternate methods.”²

Response: The policy states that the discharger shall use any U.S. EPA approved method. This statement covers all the test procedures covered under 40 CFR Part 136 including ones for NPDES dischargers.

Letter: **CVCWA1**, Pg**16**, P**78**

NOT
COMMENT

Excerpt: 50

Type: Greet/Ending

Again, we thank you for the opportunity to provide these comments. We look forward to working with you and your staff to refine the current proposed policy language and to craft effective solutions applicable to future designation and implementation of the new beneficial uses and the associated Mercury Provisions.

Response: Comment noted.

Letter: **CVCWA1**, Pg**23**, P**79**

COMMENT

Excerpt: 51

Type: Restatement of our text

[Attachment B] [Staff Report pages297-303]

Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Part 2).¹¹ Part 2 would constitute new regulatory language.]

II. BENEFICIAL USES

[Proposed text to be added to Chapter II (Beneficial Uses) of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan).]

A Regional Water Quality Control Board shall use the beneficial uses and abbreviations listed below, to the extent it defines such activities in a water quality control plan after *[insert effective date of Part 2]*.

To designate the Tribal Tradition and Culture or Tribal Subsistence Fishing beneficial uses in a water quality control plan for a particular waterbody segment and time(s) of year, a CALIFORNIA NATIVE AMERICAN TRIBE must confirm the designation is appropriate. No confirmation is required to designate the Subsistence Fishing beneficial use in a water quality control plan.

The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses relate to the risks to human health from the consumption of noncommercial fish or shellfish. The two subsistence fishing beneficial uses assume a higher rate of consumption of fish or shellfish than that protected under the Commercial and Sport Fishing and the Tribal Tradition and Culture beneficial uses. The function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to, Aquaculture,

Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.

- 4) Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or LIFEWAYS of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.
- 5) Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal needs for sustenance.
- 6) Subsistence Fishing (SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities, to meet minimal needs for sustenance.

[Footnote: 11 on page 23 or Saff Report page 297] The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that Part 2 will be incorporated into the ISWEBE Plan, upon the ISWEBE Plan's adoption.

III. WATER QUALITY OBJECTIVES

[Proposed text to be added to Chapter III (Water Quality Objectives) of the ISWEBE Plan.]

D. Mercury

1. Applicability

Chapter III.D.2 establishes water quality objectives for the reasonable protection of people and wildlife that consume fish and apply to all the inland surface waters, enclosed bays and estuaries of the State that have the applicable beneficial uses. The water quality objectives that protect people who consume fish apply to waters with the COMM, CUL, T-SUB, and SUB¹² beneficial uses. The water quality objectives that protect wildlife that consume fish apply to waters with WILD, MAR, RARE, WARM, COLD, EST, and SAL beneficial uses.¹³

Mercury Water Quality Objectives

Chapter III.D.2 contains five numeric mercury fish tissue water quality objectives, which are formulated for one or more of the applicable beneficial uses, depending on the consumption pattern (which includes consumption rate, fish size, and species) by individuals and wildlife. Additionally, different sizes and species of fish contained at a water body will, in some cases, affect whether a particular water quality objective may be utilized to evaluate whether one or more beneficial uses are supported. Therefore, the fish in a particular water body would dictate which water quality objective(s) must be evaluated to ensure all the applicable wildlife beneficial uses are supported, as discussed below and illustrated in the flow chart in Attachment B. For any of the mercury fish tissue

water quality objectives, measurements of total mercury concentrations in fish tissue may be substituted for methylmercury concentrations in fish tissue.

a. Sport Fish Water Quality Objective

- 1) Application of the Sport Fish Water Quality Objective The Sport Fish Water Quality Objective for mercury applies to waters with the beneficial uses of COMM, CUL¹⁴, WILD, and MAR. However, in some circumstances (i.e., depending on whether TROPHIC LEVEL 3¹⁵ or TROPHIC LEVEL 4 fish are in the water body), with respect to the WILD and MAR beneficial uses, additional water quality objectives also need to be utilized to evaluate whether consumption of fish by all wildlife species is supported (see below discussion).

With respect to the WILD and MAR beneficial uses, the Sport Fish Water Quality Objective may be used to evaluate whether all species are supported only when applied to TROPHIC LEVEL 4 fish, except with respect to the California least tern (as discussed in Chapter III.D.2.e). If the objective is measured using TROPHIC LEVEL 3 fish, protection of all wildlife species within the WILD and MAR beneficial uses is not ensured. Therefore, if TROPHIC LEVEL 3 fish are used, then the Prey Fish Water Quality Objective (as described in Chapter III.D.2.d) shall be used, but if the water body is habitat for California least tern, then the California Least Tern Prey Fish Objective (as described in Chapter III.D.2.e) shall be used. However, if the Sport Fish Water Quality Objective is exceeded when applied to TROPHIC LEVEL 3 fish, that is sufficient evidence to indicate that the Prey Fish Water Quality Objective or, if applicable, the California Least Tern Prey Fish Objective is also exceeded without having to measure the two latter objectives (see flow chart in Attachment B).

[Footnotes on page 24 or Staff Report 298]:

12 The water quality objective applicable to the SUB beneficial use (see Section III.D.2.c) also applies to the Subsistence Fishing (FISH) beneficial use contained in the North Coast Regional Water Quality Control Board's water quality control plan. (Water Quality Control Plan for the North Coast (May 2011), p. 2-3.00.)

13 Any explicit reference in the MERCURY PROVISIONS to the WILD and MAR beneficial uses shall hereinafter include the WARM, COLD, EST, and SAL beneficial uses.

14 If site-specific studies indicate a consumption pattern under the CUL beneficial use higher than the consumption rate used for the objective to support the COMM beneficial use, then the Regional Water Board should consider adopting a site-specific objective to protect consumption of fish under the CUL beneficial use.

15 Terms in "all cap" font (excepting the beneficial use abbreviations) are defined in Attachment A (Glossary).

2) Sport Fish Water Quality Objective

The Sport Fish Water Quality Objective is: The average methylmercury concentrations shall not exceed 0.2 milligrams per kilogram (mg/kg) fish tissue within a calendar year. The water quality objective applies to the WET WEIGHT concentration in skinless fillet in TROPHIC LEVEL 3 or TROPHIC LEVEL 4 fish, whichever is the HIGHEST TROPHIC LEVEL FISH in the water body. Freshwater TROPHIC LEVEL 3 fish are between 150 to 500 millimeters (mm) in total length and TROPHIC LEVEL 4 fish are between 200 to 500 mm in total length, except for sizes specified in Attachment C, or as additionally limited in size in accordance with LEGAL SIZE LIMIT

for the species caught. Estuarine fish shall be within the LEGAL SIZE LIMIT and greater than 150 mm, or as otherwise specified in Attachment C.

b. Tribal Subsistence Fishing Water Quality Objective

1) Application of the Tribal Subsistence Fishing Water Quality Objective

The Tribal Subsistence Fishing Water Quality Objective applies to waters with the TSUB beneficial use.

2) Tribal Subsistence Fishing Water Quality Objective

The Tribal Subsistence Fishing Water Quality Objective is: The average methylmercury concentrations shall not exceed 0.04 mg/kg fish tissue within a calendar year. The objective applies to the WET WEIGHT concentration in skinless fillet from a mixture of 70 percent TROPHIC LEVEL 3 fish and 30 percent TROPHIC LEVEL 4 fish as detailed in Attachment C.

c. Subsistence Fishing Water Quality Objective

1) Application of the Subsistence Fishing Water Quality Objective

The Subsistence Fishing Water Quality Objective applies to waters with the SUB beneficial use or to waters with the FISH beneficial use (see footnote 2).

2) Subsistence Fishing Water Quality Objective

The Subsistence Fishing Water Quality Objective is: Waters with the Subsistence Fishing (SUB) beneficial use shall be maintained free of mercury at concentrations which accumulate in fish and cause adverse biological, reproductive, or neurological effects. The fish consumption rate used to evaluate this objective shall be derived from water body- and population-specific data and information on the subsistence fishers' rate and form (e.g. whole, fillet with skin, skinless fillet) of fish consumption.¹⁶ When a water quality control plan designates a water body or water body segment with the Subsistence Fishing (SUB) beneficial use, development of a region-wide or sitespecific numeric fish tissue mercury water quality objective is recommended to account for the wide variation of consumption rate and fish species encompassed by the SUB beneficial use.

d. Prey Fish Water Quality Objective

1) Application of the Prey Fish Water Quality Objective

The Prey Fish Water Quality Objective applies to waters with the WILD and MAR beneficial uses. However, the objective does not apply to water body segments where the California Least Tern Prey Fish Water Quality Objective applies (see Chapter III.D.2.e).

2) Prey Fish Water Quality Objective

The Prey Fish Water Quality Objective is: The average methylmercury concentrations shall not exceed 0.05 mg/kg in WET WEIGHT whole fish tissue of any species between 50 to 150 mm in total length during the breeding season. The breeding season is February 1 through July 31, unless site-specific information indicates another appropriate breeding period.

e. California Least Tern Prey Fish Water Quality Objective

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1) Application of the California Least Tern Prey Fish Water Quality Objective

The California Least Tern Prey Fish Water Quality Objective applies to water with the WILD, MAR, and RARE beneficial uses at water bodies where the least tern or least tern habitat exists, including but not limited to the water bodies identified in Attachment D.

2) California Least Tern Prey Fish Water Quality Objective

The California Least Tern Prey Fish Water Quality Objective is: The average methylmercury concentrations shall not exceed 0.03 mg/kg fish tissue from April 1 through August 31. The objective applies to the WET WEIGHT concentration in whole fish less than 50 mm total length.

[Footnote on page 26, or Staff Report page 300]:

16 U.S. EPA recommended national subsistence fishing consumption rate of 142 grams per day (4 to 5 meals per week) shall be used to translate the narrative objective unless a site-specific numeric water quality objective is developed or an external peer-reviewed consumption study uses a different methodology to translate the narrative water quality objective.

Interaction of Mercury Water Quality Objectives with Basin Plans

The MERCURY WATER QUALITY OBJECTIVES do not supersede any site-specific numeric mercury water quality objectives established in a Basin Plan, except (i) the freshwater mercury water quality objective for chronic effects to aquatic life (0.025 µg/L) established in the San Francisco Bay Basin Water Quality Control Plan (Table 3-4, and corresponding note); and (ii) the total body burden of 0.5 µg/g wet weight established for the mercury water quality objective for aquatic organisms in the Water Quality Control Plan for the Central Coastal Basin (see note accompanying Table 3-5).

IV. IMPLEMENTATION OF WATER QUALITY OBJECTIVES

[Proposed text to be added to Chapter IV (Implementation of Water Quality Objectives) of the ISWEBE Plan.]

D. Mercury

2 General Applicability of the Mercury Implementation Provisions

The implementation provisions of Chapter IV.D shall be implemented through NPDES permits issued pursuant to section 402 of the Clean Water Act, water quality certifications issued pursuant to section 401 of the Clean Water Act, waste discharge requirements (WDRs), and waivers of WDRs, where any of the MERCURY WATER QUALITY OBJECTIVES apply. The implementation provisions pertaining to a particular beneficial use do not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established pertaining to the same beneficial use or uses.¹⁷

Municipal Wastewater and Industrial Discharges

a. Applicability

Chapter IV.D.2 applies to dischargers issued individual non-STORM WATER National Pollutant Discharge Elimination System (NPDES) permits. The PERMITTING AUTHORITY shall incorporate the following requirements, as applicable, into NPDES permits during every permit issuance or renewal.

b. Water Column Translations

Because the Mercury Water Quality Objectives (Chapter III.D) are fish tissue based and not water column based, fish tissue based water quality objectives were converted to water column values (denoted as “C”) to be used for reasonable potential analysis and development of effluent limitations. The applicable value of C that corresponds with the water body/beneficial use designations in Table 1 shall be used to determine a discharger’s REASONABLE POTENTIAL and any applicable effluent limitation (see Chapter IV.D.2.c). The PERMITTING AUTHORITY shall use its best judgement to assign the most appropriate water body type (in Table 1) based on the receiving water’s potential for methylation during the period of discharge(s). Alternatively, a site-specific water column concentration value for C can be developed as described in Chapter IV.D.2.b.1, below.

[Footnote on page 27 or Staff Report page 301]:

17 Such “receiving waters” are those for which a mercury or methylmercury TMDL is approved and does not include upstream water bodies even if the TMDL contains waste load allocations for the dischargers to the upstream water bodies to be implemented as effluent limitations to achieve the downstream water quality standard. For such upstream dischargers, the implementation provisions of Chapter IV.D apply. In the case where both the TMDL and application of the procedure at Chapter IV.D.2.c requires an effluent limitation, then the more stringent requirement shall apply to the discharge.

[See Table 1 on page 28 or Staff Report page 302]

1) Site-Specific Water Column Translations

The PERMITTING AUTHORITY may develop a site-specific water column concentration value (C) by utilizing a site-specific BIOACCUMULATION FACTOR, linear regression model, or peer-reviewed model, derived from a study of the receiving water downstream of the discharge. The study must, at a minimum, include data from three separate time points. Data collected at each time point must all be collected on the same day from within the same vicinity and must include a minimum of: 1) four total mercury water column samples, 2) four dissolved methylmercury water column samples, and 3) ten mercury fish tissue samples. The fish tissue samples shall be from TROPHIC LEVEL 4 FISH, but if TROPHIC LEVEL 4 FISH are not the HIGHEST TROPHIC LEVEL FISH in the water body, then the samples shall be from the size of fish that corresponds with the Prey Fish Water Quality Objective or California Least Tern Prey Fish Water Quality Objective, whichever is applicable (see Chapter III.D.2). The sampling time points shall be at least 90 days apart. If TROPHIC LEVEL 4 FISH are not the HIGHEST TROPHIC LEVEL FISH in the water body, then two of the sampling time points shall occur during the breeding season for the applicable water quality objective. A site-specific BIOACCUMULATION FACTOR shall be calculated as the mean methylmercury tissue concentration in one trophic level divided by the mean methylmercury concentration in water. Multiple bioaccumulation factors from different time points or different species shall be combined using a geometric mean. To derive water column concentration in the form of total mercury, a chemical translator must also be used to convert from methylmercury to total mercury.¹⁸

c. Determining Whether A Discharge Requires an Effluent Limitation for Mercury

Response: Comment noted.

Letter: **CVCWA1, Pg29, P115**

COMMENT

Excerpt: 52

Type: Proposed Language Change

1) Reasonable Potential Analysis

A PERMITTING AUTHORITY is required to apply section 1.3 of the State Water Resources Control Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (generally referred to as the SIP) (pages 5-8), to determine whether a discharge has REASONABLE POTENTIAL, in which case the permit must contain a water quality-based effluent limitation.

To determine REASONABLE POTENTIAL, the PERMITTING AUTHORITY shall apply Steps 1-8 of section 1.3 of the SIP, as modified by the following:

For mercury and other bio-accumulative pollutants that are regulated through fish tissue objectives, the REASONABLE POTENTIAL determination shall be based on Step 7 of the SIP, as modified below:

Step 7: Replace Step 7 with the following: "Information that may be used to aid in determining if a water quality-based effluent limitation is required includes (but is not limited to): the facility type, the discharge type, mass loading analysis which evaluates the relative contribution of the discharge in comparison to other sources, assessment of the effect of reductions of the discharge loading to attainment of the water quality or fish tissue objective, demonstration of the application of best practices of pollution prevention and industrial pretreatment, presence or lack of dilution, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, existing water quality and beneficial uses of receiving water, CWA 303(d) listing for the pollutant, the presence of endangered or threatened species or critical habitat, and other relevant information. Where a TMDL has been adopted, approved by SWRCB and EPA, and is being implemented, that information should be given special consideration in the determination of the need for a water quality-based effluent limitation for the discharge in question. If data or other information needed to complete the above evaluation is unavailable or insufficient, as described in Section 1.2, to determine if a water quality-based effluent limitation is required, proceed with Step 8."

~~Step 1: Replace Step 1 of the SIP with the following: Identify the applicable water column concentration (C) for the lowest (most stringent) mercury water quality objective applicable to the receiving water in accordance with Chapter IV.D.2.b.~~

~~Step 3: Replace Step 3 of the SIP with the following: Determine the mercury concentration for the effluent using the highest observed annual average effluent mercury concentration. The annual average shall be calculated as an arithmetic mean. For any sample reported as below the detection limit, one half of the detection limit shall be used to calculate the arithmetic mean. For any sample reported as below the quantitation limit and above the detection limit, the estimated concentration shall be used to calculate the arithmetic mean. The annual average concentration is used to account for the long-term nature of the~~

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~~methylmercury bioaccumulation process, which may not otherwise be reflected using the maximum concentration as required by the SIP.~~

~~Step 4: Apply as set forth in the SIP, but utilize the annual average mercury concentration from Step 3 (rather than an MEC) to compare to the C from Step 1.~~

~~Step 5: Apply as set forth in the SIP, but replace the determination of the “maximum” ambient background concentration for mercury (denoted as B in the SIP), with the highest observed annual average ambient background. The annual average shall be calculated as an arithmetic mean as described in Section 1.4.3.2 of the SIP..~~

Response: Please see Response to Comment CVCWA1-21.

Letter: **CVCWA1, Pg30, P122**

COMMENT

Excerpt: 53

Type: Proposed Language Change

2) Calculation of the Effluent Limitations

If, upon the completion of applying the REASONABLE POTENTIAL analysis set forth in Chapter IV.D.2.c.1, [the PERMITTING AUTHORITY does not exempt certain discharges from some or all of the provisions of Chapter IV.D.2 under this Chapter, but determines that a water quality based effluent limitation is required for mercury or other bio-accumulative pollutants that are regulated through fish tissue objectives](#), then the PERMITTING AUTHORITY shall calculate the effluent limitation as follows: by applying section 1.4 of the SIP.

Replace Part A of section 1.4 of the SIP with the following:

“A. If a TMDL is in effect for mercury (or other bio-accumulative pollutant), retain the water quality-based effluent limitation at the existing wasteload allocation (WLA) in the existing TMDL until an amended TMDL is adopted and approved. Upon adoption and approval of an amended new TMDL associated with new mercury water quality objectives (for mercury or other bio-accumulative pollutants objectives), adjust the water quality-based effluent limitation to be consistent with the WLAs specified in the newamended TMDL.

If a TMDL is not in effect for mercury (or other bio-accumulative pollutants), set an interim performance-based effluent limitation pending development of a pending or future TMDL for such bio-accumulative pollutants. Also, establish NPDES permit requirements to: (1) ensure implementation of best practices for pollution prevention and industrial pretreatment, (2) require participation in the development of the TMDL, and (3) require participation in a stakeholder effort to identify control measures on the major sources impacting the levels of mercury or other bioaccumulative pollutants in fish tissue in the receiving waters of the discharge.”

If part B of section 1.4 of the SIP applies, the PERMITTING AUTHORITY shall apply Steps 1-7 contained in part B of the SIP as modified by the following:

~~Step 1: Replace Step 1 of the SIP with the following: Use the same value for C as used for the REASONABLE POTENTIAL analysis in Chapter IV.D.2.c.1, Step 1, rather than the applicable fish tissue mercury water quality objective. If data are insufficient to calculate the effluent limitation, the RWQCB shall establish interim requirements in accordance with section 2.2.2 of the SIP.~~

~~Step 2: Apply as set forth in the SIP, except the ambient background concentration (referred to as B in the SIP) shall be calculated as an arithmetic mean as described in Section 1.4.3.2 of the SIP. Dilution shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES.~~

~~Steps 3-5: Skip Steps 3-5. Step 6: Apply as set forth in the SIP but set the effluent limitation as an annual average of total mercury (rather than a monthly average) equal to the effluent concentration allowance (ECA) (from Step 2).~~

~~Step 7: Skip Step 7.~~

Response: We appreciate your input and your proposed language. Although your proposed language has not been incorporated, the Provisions have been revised. See Chapter IV.

Letter: **CVCWA1, Pg31, P130**

COMMENT

Excerpt: 54

Type: Regulatory Language

Methods, Routine Monitoring, and Compliance Schedules

- 1) Methods. For monitoring total mercury in effluent, the discharger shall use any U.S. EPA-approved method that has a quantitation limit lower than the effluent limitation. For monitoring receiving water, the discharger shall use any U.S. EPA-approved method that has a quantitation limit lower than 0.5 ng/L for total mercury, and lower than 0.06 ng/L for methylmercury.
- 2) Routine Monitoring. The following are the minimum monitoring requirements for dischargers assigned an effluent limitation, but the PERMITTING AUTHORITY may require dischargers to conduct additional monitoring. The rationale for requiring additional mercury monitoring must be documented in the NPDES fact sheet or equivalent document.
 - i. Dischargers with mercury effluent limitations that are authorized to discharge at a rate equal to or greater than five million gallons per day are required to conduct routine total mercury monitoring in the effluent at a frequency no less than once each CALENDAR QUARTER for the duration of the permit.
 - ii. Dischargers with mercury effluent limitations that are authorized to discharge at a rate less than five million gallons per day are required to conduct routine total mercury monitoring in the effluent at a frequency no less than once each year for the duration of the permit.
 - iii. Dischargers without mercury effluent limitations are required to conduct total mercury monitoring in the effluent at a frequency of no less than once per permit cycle.

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- 3) **Compliance Determination.** The annual average mercury concentration in the effluent shall be calculated as an arithmetic mean. For any sample reported as below the detection limit, one half of the detection limit shall be used to calculate the arithmetic mean. For any sample reported as below the quantitation limit and above the detection limit, the estimated concentration shall be used to calculate the arithmetic mean.
- 4) **Compliance Schedule.** The PERMITTING AUTHORITY may include a compliance schedule in NPDES permits to achieve the mercury effluent limitation in accordance with the Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (State Water Board Resolution No. 2008-0025).

Exceptions to the Reasonable Potential Analysis

- 1) **Small Disadvantaged Communities.** The PERMITTING AUTHORITY is authorized to exempt POTWs only serving SMALL DISADVANTAGED COMMUNITIES from some or all of the provisions of Chapter IV.D.2.c if the PERMITTING AUTHORITY makes a finding that the discharge will have no REASONABLE POTENTIAL with respect the applicable MERCURY WATER QUALITY OBJECTIVES. For POTWs only serving SMALL DISADVANTAGED COMMUNITIES that do not have an effluent discharge prior to permit issuance or renewal that is representative of the quality of the proposed discharge, the PERMITTING AUTHORITY is authorized to make this determination and exempt the POTW only after the first year of effluent discharge.

If exempt, the PERMITTING AUTHORITY shall have the discretion to assign routine monitoring as necessary. Routine monitoring schedules for POTWs only serving SMALL DISADVANTAGED COMMUNITIES shall not exceed the applicable frequency specified in Chapter IV.D.2.d.2 for the discharger’s authorized rate of discharge.

Response: Please see Response to Comment CVCWA1-55.

Letter: CVCWA1 , Pg33, P136	COMMENT	Excerpt: 55	Type: Proposed Language Change
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- 2) **Insignificant Discharges.** The PERMITTING AUTHORITY is authorized to exempt certain dischargers from some or all of the provisions of Chapter IV.D.2 if the PERMITTING AUTHORITY makes a finding that the discharge will have no REASONABLE POTENTIAL with respect to the applicable MERCURY WATER QUALITY OBJECTIVES.

If exempt, the PERMITTING AUTHORITY shall have the discretion to assign routine monitoring as necessary. Routine monitoring schedules for INSIGNIFICANT DISCHARGES shall not exceed the applicable frequency specified in Chapter IV.D.2.d.2 for the discharger’s authorized rate of discharge.

If determined to be exempt, nothing in this provision shall affect any obligation or requirements otherwise imposed by the PERMITTING AUTHORITY in duly adopted permits issued by the PERMITTING AUTHORITY.

Response: Thank you for your suggestion. However, the exemption for “insignificant discharges” expressly pertains to the Provisions of IV.D.2 and by that express limitation could not be construed as pertaining to any other requirement imposed in permits

Letter: **CVCWA1, Pg33, P137**

NOT
COMMENT

Excerpt: 56

Type: Regulatory Language

Storm Water Discharges

d. Applicability

Chapter IV.D.3 applies to storm water dischargers regulated under general and individual NPDES STORM WATER permits issued pursuant to Clean Water Act section 402, subsection (p). The PERMITTING AUTHORITY shall include the requirements in Chapter IV.D.3.b in individual and general NPDES STORM WATER permits when adopting or re-issuing the permits.

e. Municipal Separate Storm Sewer Systems

- 1) Phase I and Phase II MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) permits shall include a combination of the following mercury pollution prevention and pollution control measures to reduce total mercury or methylmercury discharges:¹⁹ All of the following control measures are required, except, at the discretion of the PERMITTING AUTHORITY, additional measure(s) may be substituted for one or more measures if the substituted measure(s) would provide an equivalent level of control or prevent total mercury or methylmercury pollution. If the PERMITTING AUTHORITY substitutes other measures, the justification shall be documented in the permit fact sheet or equivalent document. The effort involved in each of the required measures shall be proportional to the size and population of the MS4.
 - i. Thermometer exchange programs and fluorescent lamp recycling programs, or enhancement of household hazardous waste collection programs to better address mercury-containing waste products (potentially including thermometers and other gauges, batteries, fluorescent and other lamps, switches, relays, sensors and thermostats).
 - ii. Public education and outreach on disposal of household mercury-containing products and use of non-mercury containing alternatives.
 - iii. Education of auto dismantlers on how to remove, store, and dispose of mercury switches in autos.
 - iv. Survey of use, handling, and disposal of mercury-containing products used by the MS4 discharger agencies and development of a policy and time schedule for eliminating the use of mercury containing products by the discharger.
- 2) The PERMITTING AUTHORITY may include best management practices to control erosion in MS4 permits. However, the MS4 permit shall contain best management practices for AREAS WITH ELEVATED MERCURY CONCENTRATIONS.

f. Industrial Activities

Upon reissuance, the State Water Board shall revise the existing Numeric Action Level (NAL) for total mercury in the NPDES General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit) from 1400 ng/L to 300 ng/L or lower.

Mine Site Remediation

The PERMITTING AUTHORITY shall require dischargers to implement erosion and sediment control measures to prevent or control mercury in discharges when adopting, re-issuing, or modifying WDRs or waivers of WDRs for dischargers subject to the requirements of Title 27 of the California Code of Regulations, section 22510 (closure and post-closure of mining sites), from land where mercury was mined or mercury was used during ore processing.

Nonpoint Source Discharges

The PERMITTING AUTHORITY has discretion under existing law to require dischargers to implement erosion and sediment control measures in WDRs or waivers of WDRs, and should consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS when adopting, re-issuing, or modifying a WDRs or waiver of WDRs.

[Footnot on staff report page 34 or Staff Report page 308]: ¹⁹ On the effective date of the MERCURY WATER QUALITY OBJECTIVES, the Phase I and Phase II MS4 permits require pollution prevention and control measures (but not explicitly for mercury), which already may encompass one or more actions identified in Chapter IV.D.3.b.]

Dredging Activities

The PERMITTING AUTHORITY has discretion under existing law to require dischargers to implement total mercury monitoring and procedures to control the disturbance and discharge of mercury-contaminated material during dredging and disposal of dredged material, and should consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS when adopting, re-issuing, or modifying a water quality certification, WDRs, or waiver of WDRs.

Wetland Projects

The PERMITTING AUTHORITY has discretion under existing law to require project applicants that establish (create) or restore wetlands to include design features or management measures to reduce the production of methylmercury in the wetland, including minimizing the wetting and drying of soil by keeping the wetland flooded and sediment control measures to reduce the transport of

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total mercury or methylmercury out of the wetland, and should consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS, when adopting, re-issuing, or modifying water quality certifications, WDRs, or waivers of WDRs.

3. Attachment A. Glossary

AREAS WITH ELEVATED MERCURY CONCENTRATIONS: Areas with elevated mercury concentrations include the following areas:

- 1) Areas located in the Coast Range mountains with naturally mercury-enriched soil or sediments with total mercury concentrations of 1 mg/kg or higher;
- 2) Areas located in an industrial area with soil or sediments with total mercury concentrations of 1 mg/kg or higher;
- 3) Areas located within historic mercury, silver, or gold mine tailings;
- 4) Areas located within historic hydraulic gold mining pits in the Sierra Nevada mountain range.
- 5) Any other area(s) determined by the PERMITTING AUTHORITY in the applicable order.

BIOACCUMULATION: A process in which an organism's body burden of a pollutant exceeds that of its surrounding environment as a result of chemical uptake through all routes of chemical exposure: dietary and dermal absorption and transport across the respiratory surface.

BIOACCUMULATION FACTOR: The ratio of the concentration of a contaminant in the tissue of the organism to the concentration of the contaminant in the surrounding ambient water (see BIOACCUMULATION). A bioaccumulation factor (BAF) can be used to estimate the concentration of the chemical in water (C_{water}) that corresponds to concentration of chemical in fish tissue (C_{tissue}) using the following equation:

$$BAF = \frac{C_{tissue}}{C_{water}} \quad \text{[Also see BAF equation on page 36 or staff report page 310]}$$

CALENDAR QUARTER: A period of time defined as three successive calendar months.

CALIFORNIA NATIVE AMERICAN TRIBE: A federally-recognized California tribal government listed on the most recent notice of the Federal Register or a non-federally recognized California tribal government on the California Tribal Consultation List maintained by the California Native American Heritage Commission.

HIGHEST TROPHIC LEVEL FISH: Either TROPHIC LEVEL 3 or TROPHIC LEVEL 4 fish, whichever is the highest trophic level in the water body that is caught during monitoring, assessment, or other studies, that meet applicable quality assurance requirements.

INSIGNIFICANT DISCHARGES: NPDES discharges that are determined to be a very low threat to water quality by the PERMITTING AUTHORITY.

LEGAL SIZE LIMIT: The size limits of fish species for recreational fishing, established by title 14, California Code of Regulations sections 5.00 through 5.95.

LIFEWAYS: Any customs, practices, or art of a CALIFORNIA NATIVE AMERICAN TRIBE.

MERCURY WATER QUALITY OBJECTIVES: The fish tissue mercury water quality objectives set forth in Chapter III.D.2.

MERCURY PROVISIONS: The MERCURY WATER QUALITY OBJECTIVES and the implementation of those water quality objectives contained in Chapters III and IV, respectively.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4s): Same meaning as set forth in 40 Code of Federal Regulations, section 122.26(b)(8).

PERMITTING AUTHORITY: The State Water Board or Regional Water Board, whichever issues the permit or water quality certification.

PUBLICLY OWNED TREATMENT WORKS (POTWs): Facilities owned by a state or municipality that store, treat, recycle, and reclaim municipal sewage or industrial wastes of a liquid nature.

REASONABLE POTENTIAL: A designation used for a waste discharge that is projected or calculated to cause or contribute to an excursion above a water quality standard.

SMALL DISADVANTAGED COMMUNITIES: Municipalities with populations of 20,000 persons or less, or a reasonably isolated and divisible segment of a larger municipality encompassing 20,000 persons or less, with an annual median household income that is less than 80 percent of the statewide annual median household income.

STORM WATER: Same meaning as set forth in 40 Code of Federal Regulations section 122.26(b)(13).

TROPHIC LEVEL 3 FISH (TL3): Fish that consume mainly zooplankton, benthic invertebrates, and small, phytoplankton-dependent fish. Species include rainbow and brook trout, blue gill, sunfishes, suckers, and bullhead. Examples are shown in Attachment C.

TROPHIC LEVEL 4 FISH (TL4): Fish that consume TROPHIC LEVEL 3 fish and other aquatic organisms. Species include

largemouth, smallmouth, spotted, and striped bass; brown and lake trout; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C.

WET WEIGHT: Wet weight is part of the format for expressing the concentration of methylmercury in fish tissue. The mercury water quality objectives are expressed as a mass of methylmercury per mass of fresh or “wet” fish tissue. Concentrations expressed as methylmercury in dry weight of fish are not equivalent and must be converted to concentration on a wet weight basis if being compared with the objectives and targets.

4. Attachment B. Mercury Prey Fish Decision Diagram

[See Figure B-1 on page 38 or Staff Report page 312]

Figure B-1. Determining the need for application of mercury prey fish water quality objectives.

In some water bodies, the Sport Fish Water Quality Objective will not be sufficient to ensure wildlife beneficial uses are protected and one of the prey fish objectives needs to be measured (orange ovals, see also Chapter III.D.2.a.1). This decision depends on whether data from TROPHIC LEVEL 3 (TL3) or TROPHIC LEVEL 4 (TL4) fish are used and other factors as shown in the diagram. The wildlife-related beneficial uses are noted as WILD (Wildlife Habitat) in this diagram, but the applicable use may be Marine Habitat (MAR) or others. The Sport Fish Water Quality Objective protects beneficial use of Commercial and Sport Fishing (COMM) as well as Tribal Tradition and Culture (CUL) and wildlife beneficial uses. See Chapter III.D.2 for full details.

5. Attachment C. Fish Trophic Level Classifications

Table C-1 and Table C-2 show trophic level classifications for common species and sizes for comparison with the Sport Fish Water Quality Objective, the Tribal Subsistence Fishing Water Quality Objective, and the Subsistence Fishing Water Quality Objective. These tables do not include all possible species.

[See Table C-1 on page 39 or Staff Report page 313 - 315]

Response: The commenter did not propose any change to the Provisions Section IV.D.3. of the Proposed Provisions for Part 2 of the mercury regulation.

Letter: CVCWA1, Pg43, P153	COMMENT	Excerpt: 57	Type: Proposed language for Resolution
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Attachment C

Proposed language for SWRCB Adoption Resolution – Guidance to Regional Water Boards regarding Adoption and Implementation of Proposed Beneficial Uses for Tribal & Subsistence Fishing and Implementation of Mercury Water Quality Objectives

Whereas...

x-5. The State Water Board recognizes that the Regional Water Boards and dischargers have developed substantial technical and analytical data about various priority toxic pollutants for certain water bodies in California since the initial adoption of the SIP in 2000. Much of this information has led to the development of TMDLs for priority toxic pollutants in various regions, such as the San Francisco Bay Mercury TMDL (2006); Calleguas Creek/Mugu Lagoon Mercury TMDL (2007); Guadalupe River Watershed Mercury TMDL (2008); Walker Creek Mercury TMDL (2008); Cache Creek Mercury TMDL (2004); Sacramento-San Joaquin Delta MethylMercury TMDL (2010); and Los Angeles-Long Beach Harbor Mercury TMDL (2011).

x-6. Much of the information and technical analyses developed about the sources and impacts of priority pollutants developed by Regional Water Boards and dischargers demonstrate that, in many impaired water bodies, municipal and industrial point sources regulated via NPDES permits issued by Regional Boards are an inconsequential, or *de minimis*, source of certain priority toxic pollutants. In the case of ongoing mercury loading to certain water bodies, the *de minimis* nature of these point source contributions can be traced to aggressive pre-treatment, pollution prevention, and active treatment technologies imposed over the past two decades. Indeed, municipal and industrial dischargers combined account for less than 1.4% of the ongoing mercury loading to San Francisco Bay. Planned NPDES loads to the Delta (based on current permit requirements) will represent less than 0.1% of the methylmercury load in 2030.

x-7. By comparison, open water, tributaries and existing wetlands are known to account for about 93.8% of ongoing mercury loading in the Delta, predominantly from legacy loads. In San Francisco Bay, over 75% of the continued loading of mercury is coming from the Central Valley watershed, natural bed erosion, and atmospheric deposition. In both instances, the Regional Boards have struggled to find effective means of controlling these “untethered” sources of most of the mercury continuing to be taken-up by fish and other biota in the waters.

In 2010, the Central Valley Regional Board took the unprecedented step of assigning responsibility for open water and tributary sources of mercury to those State of California and federal agencies responsible for managing the land and water from which these mercury loads are derived. In its 2010 Delta Methylmercury TMDL, the Central Valley Regional Board specifically found that transportation and deposition of mercury-contaminated sediment from water management activities contribute to the Delta fish mercury impairment.

Specifically, the Central Valley Regional Board determined that the State and Federal Water Projects affect the transportation of mercury and the production and transportation of methylmercury. Activities including water management and storage in and upstream of the Delta and Yolo Bypass, maintenance of and changes to salinity objectives, dredging and dredge materials disposal and reuse, and management of flood conveyance flows are subject to the open water methylmercury allocations established in the TMDL. Agencies responsible for these activities in the Delta and Yolo Bypass include, but are not limited to, the Department of Water Resources, State Lands Commission, Central Valley Flood Protection Board, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers (USACE), and State Water Resources Control Board. The Regional Board also determined that the State of California owns and manages lands and waters of the state that contribute to methylmercury loads. As a

result, the State Lands Commission and Department of Water Resources were also assigned responsibility for addressing these mercury contributions to the overall fish impairment.

Assigning state and federal agency responsibility for mercury loads coming from historic legacy sources (gold and mercury mining), state and federal lands, or major water projects over which these agencies have responsibility is reasonable, fair, and just. Without doing so, there is literally no hope of successfully abating mercury in fish from some California waters. What’s more, holding these state and federal agencies responsible is consistent with existing laws, regulations and authorities of the State and Regional Water Boards. When considering application of the water quality objectives adopted [in this action] and implementing control strategies to achieve those objectives, the Regional Boards are directed to consider all available information regarding sources and contributions of mercury to a given water body and, where appropriate, assign responsibility for mercury and abatement control strategies (including any appropriate risk reduction and communication actions) to those State of California and federal agencies responsible for managing land and water from which these mercury contributions are derived.

Response: The adopting resolution may include direction for the Regional Water Boards to engage with federal and state resource agencies that have regulatory authority or control over lands or resources from which mercury loadings derive to identify successful mercury management and abatement strategies. The adopting resolution will not assign responsibility to any particular agency because the Provisions is not a restorative tool that allocates responsibility over source contributions as is customary with a Regional Water Boards development of a TMDL. The Provisions contains a program to implement the mercury objectives statewide.

Letter: CVCWA1, Pg44, P160

COMMENT

Excerpt: 58

Type: Future guide for adopting Beneficial uses

[These provisions apply to our request for future guidance from the State Board to Regional Boards when adopting the beneficial uses and applying the water quality objectives.]

x-8. The State Board directs its staff, working with the Regional Water Boards and interested stakeholders, to develop guidance for the Regional Water Boards when formally designating waters in their respective regions for T-CUL, T-SUB and SUB beneficial uses that address, without limitation, the following topics:

- Prior to designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards shall identify and evaluate all known or suspected sources of priority toxic pollutants. This analysis should consider traditional point sources, non-point sources, aerial deposition, open water, historical or “legacy” sources, and any other reasonably discernable sources of the priority toxic pollutants.
- To the maximum extent possible, all relevant information developed for TMDLs, site specific objectives, use attainability analyses, or other regulatory actions shall be utilized by Regional Boards in designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters.

- When determining whether and to what extent to designate waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards shall consider all available information relevant to ascertaining the geographic extent to which such waters are used for these beneficial uses.
- When determining site specific water quality objectives to protect T-CUL, T-SUB and SUB beneficial uses based on consumption of fish or aquatic-dependent wildlife, the Regional Boards should develop, through a publicly-noticed process, appropriate protocols for determining consumption patterns (*i.e.*, types of fish consumed, volumes of each fish consumed, frequency of consumption, etc.) relative to those waters (or sub-portions of waters) for which T-CUL, T-SUB and SUB beneficial uses have been designated.
- Regional Boards should convene working groups of key stakeholders (*e.g.*, Tribes, subsistence fishing community, regulated community, State of California, federal agencies that own or have responsibility for land or water projects that are a known or suspected source of priority toxic pollutants) to address adoption and implementation of water quality objectives for adopted uses. Considerations should include a full range of possible management and control measures, and their relative efficacy in achieving fish tissue targets.

Response: The Regional Water Boards will designate Beneficial uses through the Basin Planning Process pursuant to Water Code Section 13240 et. Seq and the federal public participation process to fully engage stakeholders. The degree to which focused stakeholder groups or other means of engagement will be determined by the individual Water Boards. In addition any designation is subject to State Water Board approval and notice which will allow additional stakeholder outreach if necessary. In addition, the scientific portion of the designation, which would include the science behind the determination of site-specific objectives requires peer review. Also, Please see Responses to Comments WSPA2-38, CVCWA1-36, 38, and 40.

ACWA1

Author: Rebecca Franklin et al. **Title:** Regulatory Advocate **Organization(s):** ACWA, CWA, CMWA

Address: none **Interest Group:** Water Agencies

Date: 2/17/2017

Contact person: Rebecca Franklin **Phone:** 916-441-4545 **E-mail:** none

Letter: ACWA1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
I. INTRODUCTION. The Association of California Water Agencies, the California Water Association, and the California Municipal Utilities Association thank you for the opportunity to provide comments on the Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions, issued on January 3, 2017 (referred to hereinafter as the “Staff Report”).			
Response: Comment noted.			
Letter: ACWA1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: background/history
The Association of California Water Agencies (ACWA) is the largest statewide coalition of public water agencies in the country. Its 430 public agency members collectively are responsible for 90% of the water delivered to cities, farms and businesses in California. ACWA’s mission is to assist its members in promoting the development, management and reasonable beneficial use of good quality water at the lowest practical cost in an environmentally balanced manner. ACWA’s public agency members are special districts created to perform specific functions and include irrigation districts, municipal water districts, county water agencies, community service districts, flood control districts and others. ACWA’s members carry out highly specialized functions to support their communities and protect public health, ranging from water treatment, and delivery, to wastewater treatment, to recycled water production and distribution, to flood control, to groundwater management and a host of others, ACWA member agencies.			
Response: Comment noted.			
Letter: ACWA1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: background/history
The California Water Association (CWA) is a statewide association that represents the interests of more than 100 investor-owned public water utilities that are regulated by, and subject to the jurisdiction of, the California Public Utilities Commission. CWA’s member water companies provide the same types of high-quality water utility services as those provided by the public agency			

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members of ACWA to nearly 6 million people in communities throughout California. CWA provides a forum for sharing best management practices, to optimize utility operations and customer service, and it promotes sound water policy by representing its members and their customers before the Legislature and regulatory agencies. Further, it creates opportunities for educating the public on the efficient use of water resources.			
Response: Comment noted.			
Letter: ACWA1, Pg2, P1	NOT COMMENT	Excerpt: 4	Type: background/history
The California Municipal Utilities Association (CMUA) is a statewide association that represents publicly-owned electric utilities that provide 25 percent of the state’s power and 40 public water agency members that deliver water to 70 percent of Californians.			
Response: Comment noted.			
Letter: ACWA1, Pg2, P3	NOT COMMENT	Excerpt: 5	Type: General Support
ACWA, CWA, CMUA, and their member agencies and utilities support the designation of beneficial uses that protect human health.			
Response: Comment noted.			
Letter: ACWA1, Pg2, P3	NOT COMMENT	Excerpt: 6	Type: background
Our comments are intended to provide the State Water Board with additional information that it may wish to consider in the adoption of this far-reaching rule-making and incorporate into the Staff Report and the regulatory text of the Provisions to provide guidance to the regional boards, which will be responsible for designating new beneficial uses and adopting WQOs into basin plans and implementing the program to attain objectives to protect beneficial uses.			
Response: Comment noted.			
Letter: ACWA1, Pg2, P4	COMMENT	Excerpt: 7	Type: implementation
II. SUMMARY.			
Consistent with our missions, ACWA, CWA, and CMUA wish to emphasize that our primary concerns arise with respect to the Mercury Provisions that will apply (1) immediately upon adoption of the proposed mercury program by the State Water Board without further hearings or additional due process or public comment opportunities,			
Response: Comment noted. The Water Quality Objectives will not apply immediately upon their approval by the State Water Board. Before they are applicable to Waters of the State the Office of Administrative law must also approve them and before they are applicable to waters of the United States they must be approved by U.S. EPA. Once the objectives are applicable there is no automatic implementation of the objectives. Implementation of the objectives would require incorporation into Water Board Orders and permits and all of those actions require additional opportunity for public comment and in most cases adoption by the applicable Water Board. The Staff Report discusses the implementation and their effective dates. See Chapter 2.3.3, 2.3.3, 2.3.4, and 2.5.			
Letter: ACWA1, Pg2, P4	COMMENT	Excerpt: 8	Type: Implementation
and (2) that are not associated with the protection of cultural or socioeconomic driven elevated rates of fish consumption. Specifically, these			

comments focus primarily on the promulgation and immediate application of the “Non-Tribal/Non-Subsistence Related Provisions” of the mercury program, namely:			
Response: Comment noted.			
Letter: ACWA1, Pg2, P4	COMMENT	Excerpt: 9	Type: WQOs too strict
A new Sport Fish mercury objective of 0.2 mg/kg for purposes of protecting human health for those consuming a typical level of fish, which is more stringent than the federal law objective, promulgated to protect COMM, WILD, RARE, WARM, COLD, MAR, EST, and SAL;			
Response: The selection of the consumption rate to protect COMM based on a California specific consumption adjustment is discussed in the Executive Summary on page xix. In addition, Appendix G discusses the California Specific consumption studies used to derive the objectives and Appendix H adequately and thoroughly discusses the derivation of the Human Health Objectives. The derivation and protection for the beneficial uses of WILD, RARE, WARM, COLD, MAR, EST and SAL are extensively discussed in Appendices J and K. In addition, the peer review by Dr. Mark Sandheirich notes that the “The Draft Staff Report and USFWS (2003) based the water quality objectives on endangered and threatened freshwater piscivorous wildlife that occur in California as well as a select group of species that were included by regional water boards in the development of site-specific objectives. Food intake rates, reference doses (discussed below) and diet compositions were determined from extensive peer-reviewed literature and published reports from the USFWS and USEPA and used commonly accepted scientific practices.” (Appendix S-13). In addition, Dr. Sandreirich reviewed the uncertainty factors around the reference doses (RfD) used to calculate the wildlife targets. He noted that while a lower wildlife target could be derived due to the uncertainty of the selection of the RfD’s stated “Using the alternative RfDs presented in USFWS (2003) indicates that the water quality objective of 0.2 mg/kg in TL4 fish may not be protective of all species. The Draft Report Appendix K (pages K-26 and K-27) makes a logical argument why the alternative RfDs were not used and acknowledges points of uncertainty that suggest a less stringent or more stringent objective. In particular, the acknowledgement and discussion of the limitations and sources of uncertainty in the calculations is a strength of the Draft Report and supports the readers’ assumption that best professional judgement was used in selecting UFs to calculate RfDs.” (Appendix S-16)			
Letter: ACWA1, Pg2, P4	COMMENT	Excerpt: 10	Type: WQO
Two new very stringent wildlife water quality objectives (WQO), Prey Fish (0.05 mg/kg) and California least tern (CLT) Prey Fish (0.03 mg/kg), promulgated to protect WILD, RARE, WARM, COLD, MAR, EST, and SAL, rather than beneficial uses directly related to fishable/swimmable goals derived from federal Clean Water Act, 33 U.S.C. § 1251; and			
Response: See Section 3.6, the “Statement of Necessity for the Mercury Water Quality Objectives.” The water quality objectives, including the Prey Fish Water Quality Objective and the California Least Tern Water Quality Objective relate directly to “fishable/swimmable” goals of the Clean Water Act. The Clean Water includes the following goals (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985; (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and <u>wildlife</u> and provides for recreation in and on the water be achieved by July 1, 1983; (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited; (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met			

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through the control of both point and nonpoint sources of pollution. (33 U.S.C. § 1251(a).) The purpose of the Clean Water Act is further specified in the regulations that implement the act:

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). “Serve the purposes of the Act” (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

(40 C.F.R. § 131.2.)

Section 6.8 of the Staff Report explains that the Prey Fish WQO is equivalent to the Sport Fish WQO when measured in trophic level 4 fish and only needs to be measured in water bodies that do not have trophic level 4 fish present. The least tern objective applies to very small fish and only applies to a limited set of waters with least tern or least tern habitat. The same objective has already been adopted by the San Francisco Bay Water Board and the Central Valley Water Board (See Staff Report Table 3-2). Section 6.7 of the Staff report explains why the Least Tern Prey Fish WQO is needed. Also see app K for calculations.

Also, Please see Response to Comment **ACWA1-9**.

Letter: ACWA1, Pg2, P4	COMMENT	Excerpt: 11	Type: Effluent Limits
Three new, exceptionally low effluent limitations (EL) for mercury (ranging from 1 ng/L to 12 ng/L) to be applied upon adoption in all non-stormwater individual NPDES permits, including NPDES permits for effluent discharged from groundwater and surface water supply treatment, wastewater treatment, and water purification/recycled water production, as well as other individual permits such as drinking water system discharges, potable water line dewatering, testing, and industrial discharge NPDES permits.			
Response: The Provisions (Chapter IV.D.2) specify that the implementation of these effluent limitations would apply to individual non-stormwater NPDES Permits, key words “individual non-stormwater”. The types of discharges being mentioned such as groundwater and surface water supply, water purification/recycled water production and discharges from drinking water systems like potable water line dewatering or hydrostatic testing are all types of discharges that are covered under a General non-stormwater NPDES Permit and therefore the Provisions and implementation of these effluent limitations would not apply to those types of discharges. In addition, some of these discharge types are likely to be eligible for the insignificant discharger exception (see Staff Report Chapters 2.3.3, 6.13, 7.2.7)._			
Letter: ACWA1, Pg2, P5	COMMENT	Excerpt: 12	Type: flow

We have raised concerns regarding the effects that the proposed Tribal beneficial uses (T-SUB and CUL) and Subsistence fishing beneficial use (SUB) could have on minimum instream flow surface water objectives, and flow-related 401 Water Quality Certification and NPDES permit requirements.			
<p>Response: The beneficial use definitions are being developed for water quality and not water rights. Appendix T states “Pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), “beneficial uses” are defined, in part, as the uses “of the waters of the state that may be protected against quality degradation” and include agricultural and industrial supply, recreation, preservation of fish and wildlife, navigation, and other uses. (Wat. Code, § 13050, subd. (f).) The State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use. However, it is not anticipated that flow objectives would be developed to support the activities contained in the Tribal Traditional & Cultural beneficial use definition. Such activities, including navigation, and to a lesser extent, ceremonial and spiritual activities, are similar to existing beneficial uses which have not required the development of flow objectives. For example, the Navigation Beneficial Use (“Uses of water for shipping, travel, or other transportation by private, military, or commercial vessels”) (NAV) has been designated to numerous waterbodies throughout the State, and no flow objective has been established for NAV.” (Pg. T-1).</p> <p>Any consideration of flow objectives would be developed in the future and it is speculative to opine on which beneficial uses would be considered in the development of flow objectives or conditions of 401 certifications. To date the Division of Water Rights has developed flow objectives to assist in meeting the fish habitat beneficial uses (WARM, COLD, SPWN etc.)</p>			
Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 13	Type: Flow
However, the Water Board Staff Workshop presentations questions, and testimony at the February 7 Hearing gave us the strong impression that flow and water supply consequences are not intended either by the State Water Board nor by the people that the new beneficial use definitions are being developed to protect. Therefore, we believe that our issues regarding the text of the proposed beneficial uses are relatively limited, and effective text revisions to address those issues should not be difficult to develop to allow their adoption.			
Response Excerpt: Comment noted. Please see Response to Comment ACWA-CWA1-12.			
Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 14	Type: Attainability
The technical evaluation commissioned by the water agencies and attached hereto as Exhibit A (Technical Report) and the Staff Report both conclude, however, that the WQOs and the ELs of the Non-Tribal/Non-Subsistence Related Provisions— which were first shared with the regulated community on January 4, 2017 (and were not published as a part of the beneficial use outreach process) — are unattainable even in the extremely long term (multiple decades at a minimum) due primarily to: [SEE ACWA1-15 through 18]			
<p>Response: The possible Water Quality Objectives were shared with the regulated community during outreach meetings specific to the Mercury Provisions held between June and October of 2014 (See Staff Report Chapter 2.6.4). In addition, documents shared with the public and regulated community and the outreach documents may be found at http://www.waterboards.ca.gov/water_issues/programs/mercury/</p>			
Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 15	Type: Legacy Pollution
Natural background environmental characteristics of all of the hydrographic units under consideration, including naturally occurring and background levels of mercury in soils and waters. <i>Cf., Wat. Code § 13241(b)</i> (requiring consideration of environmental characteristics of			

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hydrographic unit, including water quality).			
<p>Response: The staff report adequately examines the environmental characteristics of the State of California and the potential sources of mercury.. Chapter 4 of the staff report analyses the environmental setting including sources of mercury in California, the natural geology of California, including “Areas with Elevated Mercury Concentrations, atmospheric deposition, urban areas consumer products, and manufacturing, as well as factors that influence the conversion of mercury to methyl mercury. Chapter 4.5 specifically discusses the current levels of mercury in the environment. In addition, see chapter 10 for a summary of the considerations required under Water Code Section 13241. “The legacy of mercury left by historic gold and mercury mining is an important factor that should be considered when developing the Mercury Water Quality Objectives or implementation programs. Human activity may prevent attaining the Mercury Water Quality Objectives for many fish species for the next century in many waters, but there is no way to know this for certain. This legacy mercury contamination is described in the environmental background in Chapter 4. Similarly, mercury from atmospheric emissions may be a significant source of mercury that will prevent attainment of the Mercury Water Quality Objectives (also discussed in Chapter 4). Otherwise, the environmental characteristics of all hydrographic units that would be affected by the Provisions are described in Appendix D. The difficulty in achieving more protective options for the Mercury Water Quality Objectives (discussed in Sections 6.2 through Section 6.6) is due to the legacy mercury contamination and atmospheric emissions. Finally, Section 6.9 discusses how the Provisions should to address legacy mines.” (Chapter 10.1.20)</p>			
Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 16	Type: Non-point
The water quality conditions that can be reasonably achieved through controllable water quality factors, given the absence of technologies and methods that enable control of mercury in non-point source discharges of sediment or aerial deposition. <i>Cf., Wat. Code § 13241(c)</i> (requiring consideration of water quality conditions that could reasonably be achieved through coordinated control of all factors affecting water quality).			
<p>Response: The Staff Report at Chapter 7 discusses the Reasonably Foreseeable methods of compliance. In addition, the staff report at Chapter 10.1.3 summarizes the analysis as. “The legacy of mercury left by historic gold and mercury mining is an important factor that should be considered when developing the Mercury Water Quality Objectives or implementation programs. Human activity may prevent attaining the Mercury Water Quality Objectives for many fish species for the next century in many waters, but there is no way to know this for certain. This legacy mercury contamination is described in the environmental background in Chapter 4. Similarly, mercury from atmospheric emissions may be a significant source of mercury that will prevent attainment of the Mercury Water Quality Objectives (also discussed in Chapter 4). Otherwise, the environmental characteristics of all hydrographic units that would be affected by the Provisions are described in Appendix D. The difficulty in achieving more protective options for the Mercury Water Quality Objectives (discussed in Sections 6.2 through Section 6.6) is due to the legacy mercury contamination and atmospheric emissions. Finally, Section 6.9 discusses how the Provisions should to address legacy mines”.</p>			
Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 17	Type: implementation
The absence of measures in the implementation program reasonably designed to achieve the new water quality objectives. <i>Cf., Wat. Code § 13242 (a)</i> (requiring implementation program to include a description of the nature of actions necessary to achieve water quality objectives).			
<p>Response: The provisions include a robust and reasonable implementation program to achieve the objectives. (See regulatory provisions Section IV. Implementation of Water Quality Objectives) and Chapter 7 of the Staff Report at Chapter 7. The program of implementation is</p>			

also extensively discussed in Sections 2.3.3, 6.9, 6.10, 6.11, and 6.12 of the Staff Report. The reliance on sediment controls as a primary source control for nonpoint sources and mercury mines was also peer reviewed by Dr. Marc W. Beutel who stated in summary that “The focus on sediment and erosion control in the Storm Water Discharges section of the draft amendment, with a particular emphasis on control measures in areas where soils are naturally rich in mercury or have a history of mining activity, is appropriate.” (See Appendix S-10) For point sources there is extensive discussion on the use of bioaccumulation factors and a derivation of a water column target to be used for the derivation of reasonable potential and water column effluent limits. The peer review agreed with the approach to use a water column translator for point source dischargers, and in particular in regards to the BAF derived 12 ng/L translator states “In reviewing the narrative in (6.11) Issue K in the draft staff report, I agree with the need for a consistent and simple method to develop effluent limitations for mercury and to draft permits. The recommended Option 1 in Section 6.11.3 of the draft staff report, with its focus on a water column target for total mercury (Figure 6-2), seems like the most appropriate approach. This contrast with Option 2 (Figure 6-3), in which effluent limitation is based on site-specific fish mercury content. I agree that the barriers to implementing Option 2 on a wide scale, which include on-going collection and evaluation of site-specific fish tissue data, are significant.” (Appendix S-2). In addition, Dr. Beutel questioned the wisdom on not including a water column translator to protect slow moving waters. In response to the peer review comment the Provisions were revised to explicitly include water column translators for other water body types. See Appendix S-2, which states:

“One question I have regarding Option 2 [(6.12, Issue L)] and Figure 6-3 is the rationale for using ≥ 4 ng/L as an effluent threshold for potentially accepting an effluent limitation. Where did this value come from and why was it used? Was the 4 ng/L from a 0.2 mg/kg fish tissue concentration translated to a water column target using the USEPA mean lake/river bioaccumulation values as detailed in Appendix I (top of p. I-3)? Moreover, what happens in the flow chart if the effluent has a measurable total mercury concentration < 4 ng/L?”

Letter: ACWA1, Pg3, P1	COMMENT	Excerpt: 18	Type: compliance
The absence of concurrently adopted compliance protections for dischargers.			
Response: There is no regulatory or statutory requirement to concurrently adopt “compliance protections for dischargers” when the water boards adopt new water quality objectives. However, to the extent that new, more stringent effluent limits are derived the Permitting Authority may issue a compliance schedule pursuant to the State Water Boards Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Resolution 2008-0025) [Compliance Schedule Policy]. Should that not prove sufficient the Permitting Authority could also develop a discharger or waterbody specific Variance as allowed by 40drc 131.14. Additionally, if a water is designated with either T-SUB or SUB the Provisions include a strong preference for the Water Board to adopt site-specific objectives to protect newly designated water bodies. At the time of adoption of site-specific objectives the Water Boards may, as appropriate, adopt a longer compliance schedule as allowed in the Compliance Schedule Policy subject to approval by U.S. EPA pursuant to Clean Water Act section 304(c).			
Letter: ACWA1, Pg3, P2	COMMENT	Excerpt: 19	Type: Request: More Time
III. RECOMMENDATIONS. 1. ACWA, CWA, CMUA, and their member agencies and utilities (the “water agencies”) request a time extension pursuant to the United States Environmental Protection Agency (USEPA) Consent Decree in <i>Our Children’s Earth Foundation v. USEPA</i> , paragraph 35A.			

Response: The State Water Board is not a party in the consent decree referenced above. A request for an extension should be made to the parties subject to the consent decree. The State of California is only involved in the consent decree in so far as the conditions of the decree require U.S. EPA to propose, and then finalize, criteria for mercury should they not approve criteria (objectives in California) developed and adopted by the State Water Board by June 30, 2017.			
Letter: ACWA1, Pg3, P2	COMMENT	Excerpt: 20	Type: Request: More Time
The time extension is very much need additional time to work with State Board Staff to integrate all the information and analysis necessary to develop compliance protections and additional implementation program measures to ameliorate the many legal, economic, and environmental issues created by the Non-Tribal/Non-Subsistence Related Provisions			
Response: Please see Responses to Comments WSPA 2- 2, and ACWA1-19.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 21	Type: Calculation of WQO and EL
2. Irrespective of the State Board granting a time extension, the water agencies recommend, among others, the following critical changes to the mercury program established by the Provisions:			
a) Assure that the proposed water quality objectives (WQO) and effluent limitations (EL) are properly calculated, and established only after taking into account all factors required by law to be considered and balanced;			
Response: The calculation and implementation of WQOs is extensively discussed in the Staff Report Appendix H and Appendix I and follows the requirements established under Federal and State law. The Staff Report further specifies how the fish tissue objectives were converted to water column levels for appropriate implementation of the objectives (Staff Report Appendix I) which would then be used for calculation of limitations. However, the Provisions Chapter IV.D.1 also specify when the implementation of water quality objectives do not apply which is for discharges into waterbodies that have an established TMDL. In addition, the calculation of effluent limits for Municipal and Industrial Discharges would also only apply when these discharges are issued an individual non-stormwater Permit, and certain municipal discharges such as those from water agencies which are mostly covered under a general permit would not be subject to these Provisions.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 22	Type: Economics
b) Properly and comprehensively assess the economic burden on ratepayers likely to be imposed by the Provisions;			
Response: The economic costs were analyzed using a third party expert. The costs to wastewater treatment facilities are included in that economic analysis, which is Appendix R of the Staff Report. It is not possible to predict how much of that burden will passed on to ratepayers. In addition, there is no requirement for the water boards to determine sources of funding for upgrades to facilities.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 23	Type: compliance
c) Amend the Provisions to assure extended compliance schedule authority for NPDES permits to avoid a substantial increase in potential enforcement and third party citizen suit liability;			
Response: Please see Response to Comment ACWA1-18. In addition, the Staff Report analyzed data from NPDES dischargers and found			

“current information on loads of mercury in waste water suggests that the proposed objective (also 12 ng/L) is achievable based on current technology. In addition, in accordance with the Provisions, the Water Boards have the discretion to allow dilution credits in waters that currently meet the applicable water quality standards, which would make the final effluent limitations more achievable where dilution is allowed.

Recent data from discharger self-monitoring reports indicate that about 8 percent of all discharges to waters included in geographic scope of the Provisions exceeded the 12 ng/L threshold at least once during 2009 – 2015 (Appendix N). Some of the facilities that exceeded this threshold only exceeded it in one or two years within the past six years, and met the effluent limitations in other years. Therefore, it is anticipated that these facilities would be able to adapt to the effluent limitation without a major facility upgrade” (Staff Report Chapter 7.2.7 pg. 174)

Therefore, it is unlikely that most dischargers would need a compliance schedule longer than that already allowed under the State’s Compliance Schedule Policy. However, should a discharger discharge into a water body that is, in the future, designated for Sub of T-Sub and require a more stringent effluent limit the Water Boards could consider a longer compliance schedule at that time the beneficial uses are designated.

Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 24	Type: RPA
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d) Amend the revised Reasonable Potential Process (RPA) process for mercury currently set forth in the Provisions to require consideration during the RPA analysis of all appropriate factors related to mercury exceedances in receiving waters caused primarily by natural water quality and soils conditions, legacy pollutants and uncontrollable water quality factors;

Response Please see Response to Comment WSPA2-54, and 61.

Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 25	Type: Attainability
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e) Amend the Provisions to eliminate the disproportionate burden of attaining WQOs placed on dischargers subject to individual non-stormwater permits, MS4 permits and industrial stormwater permits;

Response: The Provisions do not put a “the disproportionate burden of attaining WQOs placed on dischargers subject to individual non-storm water permits, MS4 permits and industrial storm water permits”. The program of implementation requires controls on all sources of mercury into a watershed. However, due to the federal requirements for determining reasonable potential and effluent limits for NPDES dischargers the provisions contain a detailed, but flexible methodology for complying with those federal requirements. For individual non-storm water permits, the Staff Report has cited a study that the “pollution prevention or source control are potentially effective in achieving sufficient reductions to enable POTWs to meet effluent limits that are 7.8 ng/L or lower.” For more stringent mercury objective of 1 ng/L, although the Staff Report concurs additional treatment upgrades would be necessary to achieve the reduction to meet the 1 ng/L limit, the 1 ng/L will only apply to slow moving water with the T-SUB beneficial use designation. In addition, the provisions allow the development of site specific water column translators where dischargers assert that the BAFs used in the provisions are overly stringent.

The mercury water column translators in the Provisions do not apply to MS4 permits.

Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 26	Type: compliance
f) Amend the Provisions to authorize and clarify permit compliance schedule authority, and to allow compliance schedules of longer duration than currently permitted by the <i>Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i> (SWRCB 2005) (SIP) and Resolution 2008-0025.			
Response: The compliance schedule authority in the SIP is not applicable to the Provisions. The Provisions are contained in the State Water Boards Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Resolution 2008-0025). In addition, Please see Response to Comment ACWA1-18.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 27	Type: UAA & Compliance
g) Adopt authority for, and direction to Regional Water Quality Control Boards (Regional Boards) to implement long-term compliance protections for dischargers, including: completion of Use Attainability Analyses (UAAs) to establish temporary water quality objectives for mercury prior to imposition of ELs;			
Response: Under the revised federal regulations states no longer have to adopt a specific variance policy prior to developing a variance. U.S. EPA's water quality standards regulations establish an explicit regulatory framework for the adoption of a water quality standards variance (WQS VARIANCE) that states may use to implement adaptive management approaches to improve water quality. (40 C.F.R. § 131.14.) As a result, the Water Boards may adopt a WQS VARIANCE in accordance with the federal rule, which provides:			
<p>(1) A WQS VARIANCE may be adopted on a case-by-case basis, is subject to public participation requirements applicable to the revision of a water quality standard, and is subject to U.S. EPA review and approval.</p> <p>(2) A WQS VARIANCE may be adopted for a permittee(s) or water body/waterbody segment(s) but only applies to the permittee(s) or water body/waterbody segment specified in the VARIANCE.</p> <p>(3) A WQS VARIANCE from applicable water quality standards may be allowed in certain cases where meeting the specific water quality objective is not currently attainable. A WQS VARIANCE from a water quality objective will be allowed for temporary non-attainment of water quality standards due to one or more of the reasons listed in 40 Code of Federal Regulations section 131.10 (use-attainability factors).</p> <p>(4) A WQS VARIANCE from a water quality objective shall be for the specific pollutant(s) and time-limited. WQS VARIANCES are to be adopted instead of removing a designated beneficial use for a water body where such use is not now attainable but can be expected to be attainable with reasonable progress towards improving water quality. Accordingly, the underlying beneficial use and water quality objective addressed by the WQS VARIANCE shall be retained unless the WATER BOARD adopts and U.S. EPA approves a revision to the underlying water quality standard. All other applicable water quality standards not specifically addressed by the WQS VARIANCE remain applicable.</p> <p>(5) A WQS VARIANCE once adopted and approved by U.S. EPA, shall be the applicable water quality standard for the limited purpose of</p>			

developing NPDES permit limits and requirements under section 301(b)(1)(C) of the Clean Water Act and for certifications issued under section 401 of the Clean Water Act. A WQS VARIANCE may not be adopted if the beneficial use and water quality objective addressed in the WQS VARIANCE can be achieved by implementing technology-based effluent limits required under section 301(b) and 306 of the Clean Water Act.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 28	Type: Site Specific Objectives
authorization for development of mercury site specific objectives (SSOs) for all beneficial uses (not just SUB);			
Response: There is nothing in the Provisions that would prohibit a Regional Board from establishing site-specific objective indeed, the Provisions (Ch. III.D.3) expressly state that the proposed water quality objectives do not supersede any site-specific objectives established for mercury (excepting two previously adopted). Additionally, the Staff Report encourages the development of site-specific objectives for the protection of T-SUB and CUL as well as SUB. Unless the provisions explicitly prohibited site-specific objectives they are always an option available to the Water Boards.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 29	Type: Variances
general authorization for development and use of variances for NPDES permits and WDRs;			
Response: Please see Response to Comment ACWA1-27.			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 30	Type: compliance
and general authorization for use of mixing zones and/or dilutions credits for NPDES permits and WDRs;			
Response: There is nothing in the Provisions that prevent the Regional Boards considering mixing zones and/or dilution credits. The Provisions (Chapter IV.D.2.c.2) simply specify that dilution credits be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable fish tissue mercury water quality objective, and does not automatically prohibit dilution if a waterbody is in the 303(d) list. However, if a waterbody where a facility discharges is on the 303(d) list, then this means that there could be site-specific data that indicates the fish tissue mercury objective is exceeded and thus the prohibition would apply. Now on the other hand, if a waterbody where a facility discharges is not on the 303(d) list then site specific data would be needed to determine if the water quality objective is exceeded or not and based on the results, dilution can be granted or prohibited. The language has been clarified to state " <u>A dilution credit should be denied if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES and other information indicated a lack of assimilative capacity, including the hydraulics of the water body, potential for bioaccumulation, or other pertinent factors.</u> ".			
Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 31	Type: implementation
h) Bolster the currently insufficient implementation program by adopting additional implementation measures that will lead to meaningful reductions in mercury in the state's water and fish, some of which may be appropriate to offer as alternative compliance pathways for dischargers;			
Response: The Staff report discusses the reasonably foreseeable methods of compliance for all known sources categories of mercury. The Provisions either, a. require implementation measures where existing programs are insufficient, or in the case of water column translators,			

where none exist, or recognize existing regulatory tools that are sufficient to control mercury. Since this is not a TMDL, and covers all waters that do not have a TMDL for mercury adopted, it would not be possible to create a program of implementation that would explicitly address all sources of mercury within a watershed. Such approaches embodied in the TMDL program.

In addition, Please see Response to Comment WSPA2-54, and 61.

Letter: ACWA1, Pg4, P1	COMMENT	Excerpt: 32	Type: wetlands
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i) Eliminate vague regulations governing wetlands to assure that the Provisions are consistent with and do not impede: the stated intent of the State Water Board, which is not to prevent new wetland projects because of mercury concerns; requirements of the State Board’s “No Net Loss” policy for wetlands and other similar state and federal law requirements;

Response: Section 6.10.3 of the Staff Report states, “New wetland projects (creation or restoration of wetlands) should not be prevented because of mercury concerns. However, wetland projects should be done in manner to reduce unintended impacts.” This is in line with the Executive Order W-59-93, “No Net Loss” policy for wetlands as it encourages net gain in quantity as well as quality of wetlands in the State, while also fostering creativity in planning, design, and implementation.

Section IV.D.7 of the Provisions is an affirmative statement that the Permitting Authority can, at their discretion, require wetland projects to include design features to minimize mercury methylation. The Provisions does not prohibit new wetlands or reduce existing wetlands in any way.

Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 33	Type: flow
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j) Tailor beneficial uses to eliminate concerns regarding water supply and instream flow objectives; and

Response: Some beneficial uses may be affected by flows. Navigation, Warm Freshwater Habitat, Cold Freshwater Habitat, and wildlife, all can be affected by instream flows. The Provisions do state, “The function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats.” However, the Provisions purposefully do not include any such statement regarding the Tribal Tradition and Culture beneficial use and instream flow.

Section 6.4.3 of the Staff Report states, “The State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use. However, it is not anticipated that flow objectives would be developed to support the activities contained in the Tribal Traditional & Cultural beneficial use definition. Such activities, including navigation, and to a lesser extent, ceremonial and spiritual activities, are similar to existing beneficial uses which have not required the development of flow objectives.”

Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 34	Type: BU/Designation
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k) Provide guidance to Regional Board with respect to designation of the new water quality objectives, compliance protections, and robust implementation measures that should be considered if newly defined beneficial uses and WQOs are considered for designation and adoption by Regional Boards.

Response: Please see Responses to Comments WSPA2-8, 32, 35, and 74.

Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 35	Type: Request: More Time
IV. DISCUSSION.			
A. Request for Time Extension.			
A time extension is requested to assure that the mercury program when adopted can achieve the following goals (see Excerpts 36 – 41):			
Response: Please see Response to Comment ACWA1-19.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 36	Type: Legacy Pollution
Directs resources toward achieving real, measurable reductions of mercury in fish and the environment, which are caused, as set forth in the Staff Report, primarily by natural background conditions in soils, aerial deposition, and legacy mercury and gold mines;			
Response: Please see Response to Comment WSPA2-22.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 37	Type: Economics
Avoids substantial increases in cost for treatment upgrades and development of new technologies, which must be borne by water and wastewater ratepayers, many of whom are socio-economically disadvantaged, without providing measureable reduction in mercury or improvement in human health outcomes;			
Response: Please see Response to Comment CVCWA1-9. In addition, the Provisions provide exceptions for small disadvantaged communities. See (Chapter IV.D.2.e.1) of the Provisions.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 38	Type: Economics
Provides clear and permanent compliance protections necessary to avoid substantial costs to ratepayers, many of whom are socio-economically disadvantaged, to fund enforcement penalties, fines and third party citizen suit attorneys' fees			
Response: Please see Response to Comment ACWA1-18. In addition, (Chapter IV.D.2.e.1) of the Provisions allows for an exception for POTWs serving small disadvantaged communities.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 39	Type: Attainability
since the Staff Report makes it clear that the very low mercury WQOs ranging from 0.2 to as low as 0.03 mg/kg of fish tissue, may never be attainable in most California receiving waters, or at a minimum should be expected to take decades if not centuries to attain;			
Response: Commenter's argument appears to be that because water quality objectives for methylmercury in fish tissue will only be attainable over long time scales, then the State Water Board should take no action to develop or enforce water quality standards designed to protect human health and wildlife or even to take steps to approach reducing methylmercury concentrations. Such an argument is contrary to the stated mission of the Water Boards, which is "To preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations".			

In addition, Please see Response to Comment WSPA2-22.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 40	Type: implementation
Provides additional implementation program control measures, including alternative compliance mechanisms for dischargers as well as additional state programs, to try to attain real and measurable reductions of mercury in fish and the environment; and			
Response: Please see Response to Comment WSPA2-22.			
Letter: ACWA1, Pg5, P1	COMMENT	Excerpt: 41	Type: wetlands
Avoids direction to Regional Boards to regulate wetlands, including wetlands created for natural treatment, water quality polishing, and/or to enhance beneficial uses or avoid net loss of wetlands, without the provision of meaningful guidance and direction as to what types of regulatory controls might be effective and feasible to implement.			
Response: As discussed in Section 6.10.1 of the Staff Report, The Water Boards are already responsible for regulating wetland creation and restoration involving excavation or discharge of dredge/fill material. Section 6.10.1 of the Staff Report states: “Additionally, the State Water Board has a Clean Water Act 401 Water Quality Certification and Wetlands Program that regulates discharges of fill and dredged material under Clean Water Act section 401 (33 U.S.C.1341) and the Porter-Cologne Water Quality Control Act (13370 et seq.). This program has special responsibility for wetlands, riparian areas, and headwaters because these water bodies have high resource value, are vulnerable to filling, and are not systematically protected by other programs.” Individual project analysis is used to identify and implement effective and feasible controls. Section IV.D.7 of the Provisions only reiterates existing authority and provides suggestions for considerations in areas with elevated mercury levels. Finally, there is no requirement to adopt a redundant program of implementation into regulation when the program already exists. However, the staff report does include a discussion of reasonably foreseeable methods of compliance which includes wetlands.			
Letter: ACWA1, Pg5, P2	COMMENT	Excerpt: 42	Type: Request: More Time
Such an extension of the adoption process for at least the Non-Tribal/Non-Subsistence Related Provisions is feasible and should be granted to allow development of additional information, collaboration among State Water Board Staff, and the regulated community, and development of additional compliance assurances and implementation program measures because:			
Response: Please see Responses to Comments WSPA2-2 and ACWA1-19.			
Letter: ACWA1, Pg6, P1	COMMENT	Excerpt: 43	Type: EPA Automatic Extension
While the adoption of new wildlife protection WQOs must be developed pursuant to a United States Environmental Protection Agency (USEPA) Consent Decree in <i>Our Children’s Earth Foundation v. USEPA</i> , No. 3:13-cv-2857-JSW (2014), paragraph 35A of that Consent Decree enables USEPA to obtain an extension of the due date for adoption of such objectives.			
Response: Please see Response to Comment ACWA1-19.			

Letter: ACWA1, Pg6, P1	COMMENT	Excerpt: 44	Type: implementation
While we concur that adoption of an implementation program concurrently with the adoption of new, more stringent wildlife water quality WQOs is appropriate and preferable to federal adoption of objectives and a subsequent state process to adopt an implementation program, the implementation program needs considerable work to provide for attainment of the WQOs and to protect dischargers from enforcement for the time period necessary to reach attainment.			
Response: Regarding improvements of the implementation program, Commenter does not explain what “work” would be required for changes to an implementation plan to achieve the Mercury Water Quality Objectives in this statement. Regarding protection of dischargers from enforcement for the time period.			
Letter: ACWA1, Pg6, P1	COMMENT	Excerpt: 45	Type: need for WQO
Although the federal Consent Decree is driving the adoption of new WQOs for protection of wildlife, there are no litigation, environmental justice, or other known concerns regarding the protection of human health driving adoption of a new COMM mercury WQO for those Californians eating a typical diet, rather than an elevated amount of fish as a part of their regular diet.			
Response: Please see Responses to Comments WSPA2 – 3 and 19.			
Letter: ACWA1, Pg6, P2	COMMENT	Excerpt: 46	Type: Request: More Time
We therefore urge the State Water Board to grant a substantial extension to allow for the development, in coordination with the regulated community, of additional key scientific and regulatory information regarding, at a minimum, the Non-Tribal/Non-Subsistence Related Provisions and detailed and thorough consideration of their regulatory and economic consequences in light of serious attainment challenges.			
Response: Please see Response to Comment WSPA 2-2.			
Letter: ACWA1, Pg6, P3	NOT COMMENT	Excerpt: 47	Type: Description of Reg
<p>B. Establishment of Water Quality Objectives.</p> <p>1. The Wildlife Mercury Water Quality Objectives Will Become Effective Without Any Further Regulatory Action.</p> <p>The proposed Provisions would amend the Inland Surface Waters, Enclosed Bays and Estuaries Water Quality Control Plan to include new mercury WQOs for Sport Fish, Prey Fish, California Least Tern (CLT) Prey Fish, Tribal Subsistence (T-SUB) and Subsistence (SUB). Of these, the first three would become effective and would apply statewide upon adoption of the Provisions by the State Water Board and approval by the Office of Administrative Law (OAL) and USEPA.</p> <p>Response: The comment is accurate with the exception that the California Least Tern objective would only apply to specific water bodies as specified in Attachment D of the Provisions.</p>			
Letter: ACWA1, Pg6, P3	COMMENT	Excerpt: 48	Type: Insufficient Pub Review
This is contrary to the implication – and the understanding of some – at the Staff Workshop and the State Water Board Hearing that the public			

would have additional opportunity to comment on the proposed Mercury Provisions when Regional Boards designate specific waterbodies with the proposed new beneficial use definitions of T-SUB, SUB, and Tribal, Tradition, and Culture (CUL).			
Response: The State Water Board staff stated in the outreach meetings and in the workshops that the water quality objectives, once adopted, become effective in any waters where the applicable beneficial uses are designated. The public review process for adopting the water quality objectives included outreach meetings, where the different proposed objectives were introduced and discussed, public workshops, a Board Hearing and a public meeting where the State Water Board will consider adoption. This has provided an extensive public review process and several opportunities for the public to comment on the proposed objectives. State Water Board staff have been clear that the designation of new beneficial uses to waters would undergo an additional public process through the Regional Water Boards.			
Letter: ACWA1, Pg6, P3	COMMENT	Excerpt: 49	Type: Insufficient Pub Review
Although this is true with regard to the proposed T-SUB and SUB WQOs and the Sport Fish WQO where CUL is designated, it is important to understand that the WQOs for Prey Fish, CLT Prey Fish, and Sport Fish (for all beneficial uses except CUL) will become effective immediately.			
Response: Please see Response to Comment ACWA1-48, above.			
Letter: ACWA1, Pg7, P1	NOT COMMENT	Excerpt: 50	Type: Description of Reg
The proposed Sport Fish WQO is proposed as a fish tissue concentration of 0.2 mg/kg to protect human health (COMM and CUL) and wildlife, which is lower than the current USEPA-recommended water quality criterion of 0.3 mg/kg.			
Response: Please see Response to Comment WSPA2-75, 76, and ACWA1-9.			
Letter: ACWA1, Pg7, P1	NOT COMMENT	Excerpt: 51	Type: Description of Reg
The Sport Fish WQO would apply to all inland surface waters, bay and estuaries, since all such waters with the beneficial use designations COMM, MAR, SAL, EST, WARM, COLD, WILD, and RARE would trigger the Sport Fish objective upon adoption and approval of the Provisions (<i>see</i> , Tab. 2.1).			
Response: The comment is accurate.			
Letter: ACWA1, Pg7, P1	NOT COMMENT	Excerpt: 52	Type: Description of Reg
The proposed Prey Fish WQO of 0.05 mg/kg was developed specifically to protect wildlife and would also apply to all surface waters, bays and estuaries, with MAR, SAL, EST, WARM, COLD, WILD, and RARE beneficial uses upon adoption and approval of the Provisions; as would the CLT Prey Fish WQO of 0.03 mg/kg (<i>id.</i>).			
Response: The Prey Fish Objective would apply to waters as described by the commenter upon adoption however the provisions note that they Prey Fish Objective does not apply to waters where the California Least Tern Objective applies and has been further clarified that “As discussed in Chapter III.D.2.a, it is not necessary to measure the Prey Fish Water Quality Objective if the Sport Fish Water Quality Objective applies to the same water body and is evaluated using TROPHIC LEVEL 4 fish. However, if the Sport Fish Water Quality Objective is exceeded when applied to TROPHIC LEVEL 3 fish that is sufficient evidence to indicate that the Prey Fish Water Quality Objective is also exceeded without having to measure the latter objective (see flow chart in Attachment B). “ Finally the California Least Tern Objective only applies to a very specific set of water bodies as specified in the Attachment D of the Provisions.			

Letter: ACWA1, Pg7, P2	COMMENT	Excerpt: 53	Type: attainability
2. The Proposed Water Quality Objectives Are Unattainable – At Least into the Next Century.			
The Staff Report acknowledges that the proposed WQOs, particularly the Prey Fish and CLT Prey Fish WQOs, — which will apply immediately without further action by Regional Boards to designate new tribal, subsistence or cultural beneficial uses — are unattainable even in the extreme long term (multiple decades at a minimum): “The legacy of mercury left by historic gold and mercury mining is not easily controlled and may prevent attaining the Mercury Water Quality Objectives for many fish species for the next century in many waters.”			
Response: Please see Response to Comment ACWA1-58.			
Letter: ACWA1, Pg7, P2	COMMENT	Excerpt: 54	Type: attainability
Staff Report, p. 267; see also, p. 266 (recognizing it may take a “significant period of time” to attain WQOs by implementing the Provisions). The Staff Report also notes that mercury from atmospheric emissions may be a significant source of mercury that will “prevent attainment” of the mercury WQOs (pp. 266-267.)			
Response: Please see Response to Comment ACWA1-58.			
Letter: ACWA1, Pg7, P3	NOT COMMENT	Excerpt: 55	Type: attainability
Sections 1 and 2 of the Technical Report also confirm that the proposed mercury WQOs are likely unattainable due primarily to the following:			
Response: See Response to Comment ACWA1 - 58			
Letter: ACWA1, Pg7, P3	NOT COMMENT	Excerpt: 56	Type: attainability
Natural background environmental characteristics of all of the hydrographic units under consideration, including naturally occurring and background levels of mercury in soils and waters. <i>Cf., Wat. Code § 13241(b)</i> (requiring consideration of environmental characteristics of hydrographic unit when establishing WQOs).			
Response: Please see Response to Comment ACWA1-58.			
Letter: ACWA1, Pg7, P3	NOT COMMENT	Excerpt: 57	Type: attainability
Human-caused environmental characteristics of the hydrographic units under consideration, including legacy mercury from historic gold and mercury mines and aerial deposition of mercury. <i>Cf., id.</i>			
Response: Please see Response to Comment ACWA1-58.			
Letter: ACWA1, Pg7, P3	COMMENT	Excerpt: 58	Type: attainability
Water quality conditions that can be reasonably achieved through controllable water quality factors, given the absence of technologies and methods that enable control of mercury in non-point source discharges of sediment or aerial deposition. <i>Cf., Wat. Code § 13241(c)</i> (requiring consideration of water quality conditions that could reasonably be achieved through coordinated control of all factors affecting water quality when establishing WQOs).			
Response: Please see Responses to Comments WSPA2 – 4 and 5, and ACWA1-15, 16, and 67.			
Letter: ACWA1, Pg8, P1	COMMENT	Excerpt: 59	Type: Description of Reg

Responses to Comments—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 Mercury Provisions.

3. The Mercury Water Quality Objectives Are Not Properly Established under Federal Law.

The federal Clean Water Act’s implementing regulations require states to adopt WQOs that protect beneficial uses based on sound scientific rationale. 40 CFR § 131.11(a). For toxic pollutants such as mercury, states must “review water quality data and information on discharges to identify specific water bodies” where a toxic pollutant may be adversely affecting water quality or achievement of a beneficial use. *Id.*

Response: Please see Response to Comment ACWA1-60.

Letter: **ACWA1, Pg8, P1**

COMMENT

Excerpt: 60

Type: Compliance with Federal Laws

toxic pollutant may be adversely affecting water quality or achievement of a beneficial use. *Id.* However, because the Provisions include a mass adoption of WQOs for inland surface waters, enclosed bays, and estuaries throughout the State without regard to site-specific conditions or the discharges affecting specific water bodies, the WQOs do not meet the requirements of 40 CFR section 131.11(a).

Response: partial: The comment misapplies selective phrases from Clean Water Act’s implementing regulations to argue 40 Code of Federal Regulations section 131.11(a) requires water quality objectives to be established for a specific water body based on site-specific conditions. 40 Code of Federal Regulations section 131.11(a) requires states to review water quality data and information and identify specific water bodies where toxic pollutants are at a level to warrant concern and adopt water quality objectives sufficient to protect the designated use. Section 3.9 of the Staff Report is the water quality assessment for California regarding mercury impairments. Chapter 4, Environmental Setting, includes a thorough discussion and information on the environmental characteristics of water bodies in California in relation to mercury. Appendix C contains a list of California water bodies that have been placed on the Clean Water Action section 303(d) list due to mercury levels that exceed water quality standards.

40 Code of Federal Regulations section 131.11(b) provides that in establishing numeric water quality objectives, states should base it on (a) Clean Water Act 304(b) Guidance, (b) 304(b) Guidance modified by site-specific conditions, or (c) other scientifically defensible methods. The Provisions are being proposed to protect the beneficial uses because the levels of mercury warrant concern based on evaluation of waters throughout the State. The Provisions’ mercury water quality objectives are scientifically defensible and protective of the applicable beneficial uses as required by the Clean Water Act. As stated in Appendix H “The water quality objective for human health was calculated using United States Environmental Protection Agency’s (U.S. EPA) equation for calculating the fish tissue criterion (U.S. EPA 2001)” Appendix K discusses the scientific derivation of the Wildlife Objectives which were submitted for Peer Review. As recommended by U.S. EPA the water quality objectives are expressed as pollutant concentration levels in fish tissue representing a quality of water that supports the applicable beneficial use.

When setting the Water Quality Objectives Board staff considered California specific information in conjunction with national data and studies to determining the appropriate objectives and targets for California. The Staff Report and the appendices include information on discharges into California water bodies where the data is available. As noted in Section N.1.5 of Appendix N, Board staff reviewed California specific discharge data from 2009 through 2015. Appendix G includes many California specific fish consumption studies. Appendix H analyzes

<p>the consumption patterns pertaining to the different water quality objectives to protect human health. Appendix I compares national data with California specific data used to derive bioaccumulation factors. Appendixes J and K consider California specific species when deriving wildlife targets and Appendix K discusses the scientific Derivation of the wildlife objectives. In addition the scientific basis for the wildlife objectives where peer reviewed by Dr. Mark Sandheinrich stated “Based on the assumptions in developing the RfDs for individual species (i.e., acceptance of UFs) and the use of FCMs based on nationwide rather than state-specific data, the proposed water quality objectives (0.2 mg Hg/kg in sport fish; 0.05 mg Hg/kg in prey fish 50 to 150 mm; 0.03 mg Hg/kg in prey fish < 50 mm consumed by the California least tern) may reasonably be expected to be protective of most species of piscivorous wildlife. “</p>			
Letter: ACWA1, Pg8, P1	COMMENT	Excerpt: 61	Type: Staff Report deficiency
<p>Section 10.1.2 of the Staff Report includes a brief discussion of site-specific water quality information (Environmental Characteristics and Water Quality of the Hydrographic Unit under Consideration). However, that section, comprising less than one-half a page in the Staff Report, refers only to the general conditions in the State as a result of legacy and widespread mercury contamination due to mines and atmospheric deposition, respectively. Nor is the section’s cross-reference to Appendix D, a “brief description” of the geographic scope and generalized features of the nine regions governed by the Regional Boards, availing.</p>			
<p>Response: Please see Responses to Comments ACWA1-15, and 60.</p>			
Letter: ACWA1, Pg8, P3	NOT COMMENT	Excerpt: 62	Type: Wildlife
<p>For example, the State Water Board Staff has indicated that wildlife-protective WQOs, Sport Fish (except for COMM and (future) CUL), Prey Fish and CLT Prey Fish, would apply even in waters where sensitive wildlife species do not occur.</p>			
<p>Response: Please see Response to Comment ACWA1-63.</p>			
Letter: ACWA1, Pg8, P3	COMMENT	Excerpt: 63	Type: Wildlife
<p>This application demonstrates the importance of examining the water quality conditions of specific waterbodies when adopting WQOs: the wildlife WQOs as applied to waterbodies without wildlife species do not serve the purpose of achieving the stated beneficial use. <i>See Cal. Sportfishing Protection Alliance v. SWRCB</i> (2008) 160 Cal.App.4th 1625 (site-specific WQO relaxing basin-wide temperature criteria appropriate where substantial evidence supported finding that creek had no viable population of rainbow trout).</p>			
<p>Response: Please see Response to Comment ACWA1-15, 47, and 60. In addition, the California Least Tern Objective only applies where that species has documented habitat Please see Response to Comment ACWA_CWA-47. In addition, there is nothing that prohibits the Water Boards from developing site specific objectives or site specific water column translators where these objectives may be inappropriate. Finally, the case cited above does not imply that the state may not adopt statewide water quality objectives but instead it is appropriate to consider site specific factors when developing site specific objectives. Nothing in in the provisions would prevent the development of site specific objectives.</p>			
Letter: ACWA1, Pg8, P4	COMMENT	Excerpt: 64	Type: WQO should be regional
<p>Similarly, the Tribal Subsistence WQO was established based on fish consumption information from the Shilling 2014 report. However, no coastal southern California tribes south of Ventura (Chumash) participated in the study; and it is likely that the fish diet of coastal southern California</p>			

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tribal members would differ from that of their northern California counterparts. This underscores the need to look at the species, trophic level, and size of fish consumed at a regional level, not statewide.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: ACWA1, Pg8, P5	COMMENT	Excerpt: 65	Type: compliance with federal regulations
The proposed WQOs – particularly the wildlife WQOs of Sport Fish (except COMM and CUL), Prey Fish, and CLT Prey Fish – are not based on nor do they reflect consideration of water quality data and information on discharges with regard to specific water bodies, contrary to the requirements of the federal regulations.			
Response: As stated in Section 2.6.9 of the Staff Report, Water Code Section 13241 requires that Water Boards, when establishing water quality objectives, shall consider the environmental characteristics and water quality of the hydrographic unit under consideration. Section 3.9 of the Staff Report is the water quality assessment for California regarding mercury impairments. Chapter 4, Environmental Setting, includes a thorough discussion and information on the environmental characteristics of water bodies in California in relation to mercury.			
In addition, when setting the Water Quality Objectives Board staff considered California specific information in conjunction with national data and studies to determining the appropriate objectives and targets for California. The Staff Report and the appendices include information on discharges into California water bodies where the data is available. Appendix G includes many California specific fish consumption studies. Appendix I compares national data with California specific data used to derive bioaccumulation factors. Appendixes J and K consider California specific species when deriving wildlife targets. As noted in Section N.1.5 of Appendix N, Board staff reviewed California specific discharge data from 2009 through 2015.			
Also, Please see Response to Comment ACWA1-60.			
Letter: ACWA1, Pg8, P6	NOT COMMENT	Excerpt: 66	Type: Statement of Facts
4. The Mercury Water Quality Objectives Are Not Properly Established under State Law.			
Water Code section 13241 factors to be considered in establishing WQOs shall include, but not necessarily be limited to, all of the following: (a) Past, present, and probable future beneficial uses of water. (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. (d) Economic considerations. (e) The need for developing housing within the region. (f) The need to develop and use recycled water.			
Response: Comment noted.			
Letter: ACWA1, Pg9, P1	COMMENT	Excerpt: 67	Type: compliance with CWA
The State Water Board is proposing to implement a mass designation of WQOs throughout inland surface waters, estuaries, and enclosed bays for Sport Fish, Prey Fish, and CLT Prey Fish. This fails to take into consideration the environmental characteristics and water quality at the hydrographic unit level. As discussed above, Staff Report section 10.1.2 and Appendix D do not constitute a review of site specific water quality			

information or environmental characteristics of any hydrographic unit.			
<p>Response: The Water Code does not require a review of site-specific review of the water quality or environmental characteristics of each individual hydrographic unit. The Staff Report, section 10.1.2 and Appendix D satisfy the standard required by Water Code section 13241. The Provisions propose water quality objectives that would reasonably support specific beneficial use where those uses exist throughout the State’s inland surface waters, enclosed bays, and estuaries. The objective for SUB is a narrative objective. The numeric objectives associated with COMM, CUL, WILD, RARE, and T-SUB would not apply if a Regional Water Board developed site-specific water quality objectives. The Provisions (Ch. III.d.3) provides, “The Mercury Water Quality Objectives do not supersede any site-specific numeric mercury water quality objectives established in a Basin Plan” excluding the two objectives previously established.</p>			
Letter: ACWA1, Pg9, P2	COMMENT	Excerpt: 68	Type: attainability
The WQOs, particularly the more stringent WQOs established to protect Prey Fish, CLT Prey Fish, and ultimately, potentially, in the future, T-SUB, fail to take into account the water quality conditions that could reasonably be achieved through coordinated control of the factors or conditions affecting water quality insofar as it is acknowledged that it will take decades, if not a century or more, to achieve WQOs under the proposed Mercury Provisions (Staff Report pp. 266-267).			
<p>Response: As noted in the staff report in Appendix K the Prey Fish objective is approximately equal to the sports fish objective in its stringency because it applies to small fish. The Staff Report adequately discusses the Water Quality Conditions that could reasonably be achieved through the coordinated control of all factors affecting water quality in Chapter 10.1.3</p>			
Letter: ACWA1, Pg9, P2	COMMENT	Excerpt: 69	Type: Mercury Sources
The main sources of mercury – natural background conditions, aerial deposition, and legacy mines – are diffuse throughout the environment and not readily controlled through NPDES/WDR permit conditions.			
<p>Response: Please see Response to Comment WSPA2-2.</p>			
Letter: ACWA1, Pg9, P3	COMMENT	Excerpt: 70	Type: Economics
Finally, as documented in section 3 of the Technical Report and Section II.C.3 of this memorandum, contrary to the requirements of section 13241 of the Water Code, the Staff Report fails to fully consider the economic impacts of the new WQOs.			
<p>Response: Water Code section 13241 requires the Water Boards to consider economics. The economic analysis (Appendix R of the Staff Report) was conducted by experts in economics. Appendix R contains thorough analysis of the economic impacts consisting of an analysis of the number of facilities that are currently meeting the effluent limits, which is contained in Exhibit 14 of Appendix R and an analysis of the costs to upgrade to tertiary treatment and implement pollution prevention programs to meet the effluent limits, which is included in Exhibits 15 and 16 in Appendix R.</p>			
Letter: ACWA1, Pg9, P4	NOT COMMENT	Excerpt: 71	Type: Effluent Limits
<p>C. Establishment of Mercury Effluent Limitations.</p> <p>As documented in Sections 5 and 6 of the Technical Report, the proposed effluent limitations for NPDES non-stormwater discharges are problematic for the following reasons:</p>			

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Response: Comment noted.			
Letter: ACWA1, Pg9, P4	COMMENT	Excerpt: 72	Type: Effluent Limits
They are likely much more conservative than necessary to protect even the most sensitive fish consumers because they are based on overly conservative fish tissue concentrations;			
Response: The provisions allow for site specific derivation of water column translators where the numeric water column translators may not be appropriate. The water column translators may be derived “by utilizing a site-specific BIOACCUMULATION FACTOR, linear regression model, or peer-reviewed model, derived from a study of the receiving water downstream of the discharge.” This provision provides sufficient flexibility to take into account site specific factors. In addition the staff report in , Appendix I caompreed California specific bioaccumulation factors to the national bioaccumulation factors and found general agreement. (see Page I-2)_			
In addition, Please see Responses to Comments WSPA2-54, and 61 .			
Letter: ACWA1, Pg9, P4	COMMENT	Excerpt: 73	Type: Effluent Limits
They are improperly based on national bioaccumulation factors rather than factors that take local conditions into account; and			
Response: The Staff Report Appendix I describes how and why the national bioaccumulation factors were appropriate to use and it also described that using the local California BAFs the results were very comparable, so local BAFs were actually considered in the evaluation and final determination to sue national BAFs. Furthermore, the Provisions also allow the use of site-specific BAFs			
In Addition, Please see Responses to Comments WSPA2-54, 61 and ACWA1-72.			
Letter: ACWA1, Pg9, P4	COMMENT	Excerpt: 74	Type: Effluent Limits
They are not based on the best available science.			
Response: Please see Response to Comment ACWA1-21. In addition, the Staff Report has been scientifically peer reviewed and comments and discussions on the review are in the Staff Report Appendix S.			
Letter: ACWA1, Pg9, P5	COMMENT	Excerpt: 75	Type: Effluent Limits
For these reasons, we urge the State Water Board not to adopt the effluent limitations proposed in the Staff Report until Staff can work with stakeholders to conduct additional review and incorporate the attached Technical Report comments into the analysis.			
Response: Comment noted. Please see Responses to Comments WSPA2-54 and 61.			
Letter: ACWA1, Pg9, P6	COMMENT	Excerpt: 76	Type: implementation
D. Implementation Program, Compliance and Enforcement Issues and Recommendations.			
1. Implementation Program – Legal Framework.			
Contrary to law and effective policy the program of implementation is not reasonably designed to address the quality of water as it pertains to			

mercury, or to attain the proposed WQOs for mercury.			
Response: Please see Responses to Comments ACWA_CWA-15, 16, 17, and 67.			
Letter: ACWA1, Pg9, P6	COMMENT	Excerpt: 77	Type: Description of Reg
Under State law, Water boards are instructed to consider “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)). Further, the program of implementation for achieving WQOs is required to include the following: (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private; (b) A time schedule for the actions to be taken; and (c) A description of surveillance to be undertaken to determine compliance with objectives (Wat. Code § 13242).			
Response: Please see Responses to Comments ACWA_CWA-15, 16, 17, and 67.			
Letter: ACWA1, Pg10, P1	COMMENT	Excerpt: 78	Type: Description of Reg
Additionally, under federal guidance published by EPA in April 2016, states and tribes responsible for implementing the Clean Water Act are directed to address implementation as part of the water quality criteria and standards development process, with a focus on addressing implementation issues early that may impede attainability of water quality standards. Priorities for Water Quality Standards and Criteria Programs, FY 2017-2018 (USEPA Apr. 21, 2016).			
Response: Please see Responses to Comments ACWA_CWA-15, 16, 17, and 67.			
Letter: ACWA1, Pg10, P1	COMMENT	Excerpt: 79	Type: implementation
2. Compliance/Implementation Issues.			
<i>a) The program of implementation does not properly consider water quality conditions that could reasonably be achieved through coordinated control of all factors which affect water quality in the area.</i>			
Response: Please see Responses to Comments ACWA_CWA-15, 16, 17, and 67.			
Letter: ACWA1, Pg10, P2	COMMENT	Excerpt: 80	Type: Implementation
Despite the law and guidance requiring that the implementation program must take into account the water quality conditions that could be reasonably achieved through coordinated control of all factors affecting water quality in the area, the Staff Report recognizes that attainment of the new WQOs across the many waters subject to those objectives may take a century and that the legacy of mercury left by historic gold and mercury mining, absence of original mine owners, diffuse distribution of mercury, and mercury emissions to the atmosphere makes coordinated control of contaminants “extremely challenging” (p. 267).			
Response: Please see Responses to Comments ACWA_CWA-15, 16, 17, and 67.			
Letter: ACWA1, Pg10, P2	NOT COMMENT	Excerpt: 81	Type: Sources
The Staff Report further documents that adoption of stringent ELs for mercury for individual NPDES non-stormwater discharges -- and implementation of source controls and advanced treatment to attempt to achieve such ELs – is unlikely to achieve the WQOs:			
Even if all sources of the contaminants are eliminated, the contaminants are likely to remain high for decades, because either they do not			

<p>degrade or they degrade very slowly. Much of the mercury in fish today is thought to be from historic mining in the late 19th century and early 20th century. Further, current sources may not be directly regulated by the water boards (e.g., atmospheric emissions, naturally occurring in soils, or geothermal sources). (Staff Report, p. 108.)</p>			
<p>Response: Please see Response to Comment WSPA2-22.</p>			
Letter: ACWA1, Pg10, P2	COMMENT	Excerpt: 82	Type: Attainability
<p>Nevertheless, the Provisions propose to establish a suite of unattainable WQOs, three of which (Sport Fish, Prey Fish, and CLT Prey Fish) will apply immediately to essentially all inland surface waters, bays, and estuaries, based on the numerous waterbody beneficial uses designations, any one of which triggers application of one or more of the three objectives.</p>			
<p>Response: Sections 4.5.2, 4.5.3, and 4.5.4 of the Staff Report analyze the current methylmercury levels in fish tissue in comparison to the Sport Fish Water Quality Objective, Prey Fish Water Quality Objective, and the California Least Tern Prey Fish Water Quality Objective. While the Staff Report acknowledges that in some areas with gold and mercury mining legacy the objectives may be difficult to achieve in the short term. However, data presented in these sections of the staff report show that the objectives are obtainable in many waters in California. For example, Figure 4-3 shows the methylmercury concentrations in trophic level 4 fish measured from 2000 to 2015. While the majority of samples exceeded the Sport Fish Water Quality Objective, there are several samples well below the objective. In addition, for trout dominated waters, Figure 4-5 shows that very few samples exceeded the Sport Fish Water Quality Objective. For the Prey Fish Objective, Figure 4-8 shows that the majority of sites within the San Francisco Bay Region did exceed the Prey Fish Water Quality Objective. However, these sites are generally affected by historic gold and mercury mining activities. Figure 4-9 shows that the majority of sites sampled in the Central Coast Region, Central Valley Region, Lahontan Region, and the Colorado River Basin Region did not exceed the Prey Fish Water Quality Objective. Data for the California Least Tern Water Quality Objective was only available for the San Francisco and Suisun Bays, both of which are currently covered under a TMDL. In Suisun Bay, several of the sites were able to meet the California Least Tern Water Quality Objective.</p>			
Letter: ACWA1, Pg10, P2	COMMENT	Excerpt: 83	Type: implementation
<p><i>b) The program of implementation does not include a description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.</i></p>			
<p>Response: Please see Response to Comment ACWA1-17.</p>			
Letter: ACWA1, Pg11, P1	COMMENT	Excerpt: 84	Type: Implementation
<p>The proposed WQOs are not met in the existing condition for most (if not all) of the inland surface waters, bays and estuaries to which they will apply and the implementation program does not identify any means to attain the new objectives because reasonable means to address the naturally occurring, legacy and aerial deposition sources of mercury as necessary to achieve such stringent WQOs do not exist.</p>			
<p>Response: The Staff Report acknowledges the complexities involved in attaining water quality standards for mercury where the substantial source of the impairments are due to legacy mining and atmospheric deposition (Staff Report, Chpt. 4, Section 6.9, and Appendices E and F) and developing total maximum daily loads for such waters poses technical or programmatic challenges. Yet the Water Boards should continue to utilize available regulatory tools to address mercury discharges in point and nonpoint sources to address other sources of mercury. The Water</p>			

Boards should also work with federal and state resource agencies to identify and implement mercury abatement strategies. However, as noted in the Staff Report the objectives are very dependent upon which fish species are present and in trout or salmonid dominated waters that objectives are attained contrary to the statement that “most (if not all)” water bodies would not meet the water quality objectives for Sport Fish.			
Letter: ACWA1, Pg11, P1	COMMENT	Excerpt: 85	Type: Impairment
Consequently, most inland surface waters, enclosed bays and estuaries will have to be listed under Clean Water Act Section 303(d) as impaired for mercury, requiring the time and resource intensive development of TMDLs by the regional boards for all such waters.			
Response: The Clean Water Act requires states to identify waters that do not meet applicable water quality standards and schedule such waters for development of total maximum daily loads. (40 CFR 130.7(d).) It is speculative to determine which waters might be listed in the future. Additionally, starting with the 2012 Integrated Report the Water Boards have used an equivalent target, based on the recommendation of the Office of Environmental Health Hazard Assessment of 0.2 mg/kg (See Staff Report Chapter 3.9). Contrary to the commenters assertion mercury assessment using tissue data during the 2012 Integrated Report cycle (which included only North Coast, Lohanton, and Colorado River Basin Water Boards – all substantially out of the mercury or gold mining areas) only 13% resulted in new Listings. The remaining 87% were either already on the List, delisted, or deemed to be meeting beneficial uses for mercury. All of the new listings are lakes or reservoirs (see http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml)			
Letter: ACWA1, Pg11, P1	COMMENT	Excerpt: 86	Type: compliance schedule
c) <i>The program of implementation does not include a time schedule for the actions to be taken.</i>			
Response: Please see Response to Comment ACWA1-87 below.			
Letter: ACWA1, Pg11, P2	COMMENT	Excerpt: 87	Type: compliance schedule
The Staff Report does not include a time schedule for implementation program actions to be taken, other than to declare that the water boards would determine time schedules for compliance with new discharge regulations on a “discharge-by-discharge basis” (Staff Report, p. 268).			
Response: The Provisions (Chpt. IV) identify the actions to be taken by dischargers of point and nonpoint sources and directs the implementation measures to be incorporated into the applicable permits during renewal. Monitoring requirements for certain NPDES permittees are identified in Chpt. IV.D.2.d. More extensive programs of implementation would be expected to occur at the regional level upon the evaluation of whether the standards are being achieved.			
Letter: ACWA1, Pg11, P2	COMMENT	Excerpt: 88	Type: attainability
Substantial reductions of mercury in fish tissue will have to be achieved to meet the proposed WQOs given the baseline levels measured in the State’s fish (Technical Report, section 7). According to the Staff Report, achieving the proposed WQOs may take decades, if not a century, due to legacy mercury from mines, widespread aerial deposition and natural background conditions, and the persistent nature of mercury.			
Response: Please see Responses to Comments WSPA2-4 and ACWA1-82.			
Letter: ACWA1, Pg11, P2	COMMENT	Excerpt: 89	Type: implementation
Such reductions demand implementation program measures that are not focused on individual NPDES permit discharges or industrial or			

stormwater runoff, but instead are designed to control aerial deposition, and mercury in nonpoint source runoff, particularly within high mercury open space and former mining areas. <i>See</i> , Technical Report §§ 3 and 8.			
Response: Please see Response to Comment WSPA2-22.			
Letter: ACWA1, Pg11, P2	COMMENT	Excerpt: 90	Type: Implementation
Because the Staff Report does not identify sufficient implementation program measures to attain mercury WQOs, it also fails to identify a time schedule for implementation of program measures and actions designed to achieve proposed WQOs.			
Response: Please see Response to Comment WSPA2 -13.			
Letter: ACWA1, Pg11, P2	COMMENT	Excerpt: 91	Type: Effluent Limits
<i>d) The Effluent Limitations for NPDES Non-stormwater Discharges Will Not Achieve Water Quality Objectives.</i>			
Response: Please see Response to Comment ACWA1-92.			
Letter: ACWA1, Pg11, P3	COMMENT	Excerpt: 92	Type: Effluent Limits
Point source dischargers subject to individual non-stormwater NPDES permits represent a minor source of mercury compared to the other sources (Staff Report, pp. 153-54). As such, the implementation program focuses on the wrong mercury discharges and fails to identify actions that would effectively achieve reductions of mercury in fish or the environment to a level that achieves the established WQOs. <i>See, e.g.,</i> Staff Report p. 165 (minor reductions that can be achieved through ELs imposed on wastewater and industrial discharges may not translate to noticeable reductions in mercury concentration); <i>see also</i> , Technical Report Section 1.			
Response: Effluent limitations in general are established to ensure discharge of pollutants, in this case mercury do not exceed an applicable water quality objective. An effluent limitation is not excluded if there are other sources in the waterbody that prevent it from meeting water quality objectives. Those other sources will be regulated through other programs or through a TMDL in the case; the waterbody is eventually designated as impaired for mercury. The Provisions are applicable to not just individual non-stormwater NPDES dischargers but also addresses stormwater discharges, mine site remediation, nonpoint source discharges, dredging, and wetlands.			
In addition, Please see Response to Comment WSPA2-54.			
Letter: ACWA1, Pg11, P3	COMMENT	Excerpt: 93	Type: implementation and EL
As a result, the actual sources contributing the vast majority of mercury to surface waters are not addressed by the proposed implementation program. <i>See</i> , Staff Report, p. 108. Instead, the centerpiece of the implementation program is the promulgation of new, very stringent ELs for inclusion in all individual non-stormwater NPDES permits.			
Response: Please see Response to Comment ACWA1-92.			
Letter: ACWA1, Pg11, P4	COMMENT	Excerpt: 94	Type: Reasonable Potential Analysis
Because the proposed ELs (and other implementation measures addressing industrial and urban stormwater runoff) cannot attain the proposed mercury WQOs, and because such attainment will not, in most circumstances, effectively contribute to mercury reductions, we urge the State Water Board to further amend the revised Reasonable Potential Process (RPA) process for mercury currently set forth in the Provisions to			

require appropriate consideration during the RPA analysis of appropriate factors related to mercury exceedances in receiving waters caused primarily by natural water quality and soils conditions, legacy pollutants and uncontrollable water quality factors such as aerial deposition, as well as the relatively minor nature of mercury contributed by specific discharges analyzed to determine the <i>reasonable</i> potential for such discharges to contribute to mercury pollution, rather than the most conservatively determined potential contribution to mercury pollution theoretically possible as a result of the discharge.			
Response: See response to Comment ACWA1-92. In addition, revisions have been made to the implementation chapter in the Provisions to clarify the approach a Regional Board may take with respect to an existing or developing TMDL for mercury.			
Letter: ACWA1, Pg12, P1	NOT COMMENT	Excerpt: 95	Type: reasonable potential analysis
The following amendments to the RPA steps set forth in the Provisions are recommended. The operation of these amendments to the RPA process are also graphically set forth in Technical Report § 3, Figures 2 and 3.			
Response: Comment noted.			
Letter: ACWA1, Pg12, P1	COMMENT	Excerpt: 96	Type: reasonable potential analysis
Determining Whether a Discharge Requires an Effluent Limitation for Mercury			
<i>1. Reasonable Potential Analysis</i>			
Step 3: Replace highest <i>observed</i> annual average effluent mercury concentration with the highest <u>highest-representative</u> annual average effluent mercury concentration.			
This revision allows the RWQCB discretion to consider if any data are inappropriate or insufficient for use in determining the annual average effluent mercury concentration for purposes of determining whether an effluent limitation is required.			
Response: Comment noted but no changes made in the Provisions regarding this step in the RPA process. The Regional Boards already have discretion on what data to use or not to use in an RPA in accordance with the SIP. In addition, Please see Response to Comment WSPA2-54, and 61.			
Letter: ACWA1, Pg12, P2	COMMENT	Excerpt: 97	Type: reasonable potential analysis
Step 6: <u>Replace Step 6 of the SIP with the following: If the B is less than C and mercury was not detected in any of the effluent samples, effluent monitoring is not required. In all other cases, proceed with Step 7.</u>			
<i>This revision completes the Reasonable Potential Analysis where the observed maximum ambient background concentration is less than the lowest water quality objective for mercury and mercury was not detected in the effluent. This is consistent with the Staff Report, which provides that where the background mercury level is elevated above the lowest EL “it may not be reasonable to require smaller contributors of mercury to reduce their mercury discharge to levels below background.” (p. 154)</i>			
Response: Thank you for your suggestion. Step 6 in the Provisions’ process for the SIP has now been replaced with new language in the			

Provisions. See section D.2.c			
Letter: ACWA1 , Pg 12 , P 2	COMMENT	Excerpt: 98	Type: reasonable potential analysis
<p>Step 7: Add to the list of types of information that may be used to aid in determining whether a water quality-based effluent limitation is required the following: <u>existing ambient water quality in the hydrographic unit, background conditions in soil and water, controllable water quality factors, whether the discharge is a significant source of mercury in the waterbody, and whether ELs are an effective means for reducing mercury in fish and the environment.</u></p> <p><i>This information was added to the types of information properly considered in the determination of whether a water quality-based effluent limitation is required to reflect natural background conditions and legacy mercury in the environment and recognizes the potential limitations inherent in trying to achieve reductions of mercury in fish and the environment. See Technical Report § 3, Figs. 2 and 3.</i></p> <p>Response: Comment noted, however Step 7 in the SIP is meant to consider all other information that could be used to determine if an effluent limitation is required when steps 1 thru 6 did not conclude the need for an effluent limitation. It is not meant to consider information on why an effluent limitation should or may not be required. No changes have been made in the Provisions in relation to the SIP's RPA Step 7.</p>			
Letter: ACWA1 , Pg 13 , P 1	COMMENT	Excerpt: 99	Type: reasonable potential analysis
<p>Step 8: In addition to low volume discharges, the RWQCB may <i>choose to exempt</i> <u>low threat discharges determined to have no significant adverse impact on water quality from this monitoring requirement.</u></p> <p>This addition recognizes that certain discharges permitted under an individual NPDES permit pose a low threat to water quality and as such are not expected to contain mercury; therefore these discharges should be exempted from all monitoring requirements provided for in Step 8 for mercury.</p> <p>Response: Comment noted. Low threat discharges are normally covered under a General NPDES Order and therefore they are already indirectly excluded from the Provisions. In addition, the Provisions (Chapter IV.D.2.e) already include an exception to RPA for Insignificant Discharges, which can apply to low threat and low volume discharges.</p>			
Letter: ACWA1 , Pg 13 , P 1	COMMENT	Excerpt: 100	Type: Economics
<p>e) <i>The Effluent Limitations for Individual NPDES Permit Non-stormwater Discharges Will be More Difficult to Achieve and More Expensive than Estimated in the Staff Report.</i></p> <p>Response: Please see Responses to Comments WSPA2-22 and ACWA1-107,108,109, and 110.</p>			
Letter: ACWA1 , Pg 13 , P 2	COMMENT	Excerpt: 101	Type: Interpretation of Provisions
<p>The Non-Tribal/Non-Subsistence Related Provisions state in Section IV.D.2. that the water quality objectives shall be implemented by the application of very low ELs, ranging from 1 ng/L to 12 ng/L depending on receiving water body flow conditions and beneficial uses for all individual non-stormwater NPDES Permits, 401 water quality certifications, WDRs, and waivers (pp. A-8 – 10).¹ In addition, in the future, other very stringent ELs for other bioaccumulative pollutants must also be developed (e.g., PCBs) to fully protect new wildlife protection and Tribal, Cultural, and Subsistence Fishing beneficial uses if and when designated. See Staff Report, Appendix T).</p>			

Response: Non-storm water NPDES Dischargers into streams, rivers, and other fast moving water bodies would need to meet an effluent limit of 12 ng/L. Since the majority of facilities in California discharge into rivers or other fast moving waters, See Table N-3a in Appendix N of the Staff Report, approximately seven percent of the dischargers are to estuaries, sloughs, wetlands, tidal prisms, ponds, and marshes, which may be classified as slow moving waters and need to meet an effluent limit of less than 12 ng/L. Some of the facilities that discharge to flowing waters may need to meet an effluent limit of 4 ng/L if, in the future, are designated with the Tribal Subsistence Fishing (T-SUB) or Subsistence Fishing (SUB) beneficial uses. However, no water bodies have been designated with a T-SUB or SUB. Designation would require a Regional Water Board public process prior to taking action. The approximately seven percent of facilities that discharge into slow moving waters would need to meet an effluent limit of 4 ng/L. No waters would be required to meet an effluent limit of 1 ng/L upon adoption of the Provisions, since no waters are designated with T-SUB or SUB beneficial uses. If, in the future, slow moving waters are designated with either T-SUB or SUB beneficial uses, the permitting authority has a variety of options to set appropriate effluent limits. Options include site-specific objectives, site-specific bioaccumulation factors, and dilution credits. The Provisions have been revised to account for existing TMDLs to allow for effluent limitations to be calculated based on existing mercury TMDLs and the development of new mercury TMDLs. The Permitting Authority may approve a compliance schedule or a variance to allow the facility to find cost effective methods to meet the effluent limit.

An effluent limit of 12 ng/L is not a “very low” effluent limit. As discussed in 7.2.6 of the Staff Report, “In the Eastern U.S., especially near the Great Lakes, wastewater treatment/industrial facilities have already been achieving permit requirements for mercury based on a threshold of 12 ng/L total mercury from U.S. EPA ‘s 1984 criterion, which is much lower than California’s current criterion of 50 ng/L. In Minnesota’s 2007 statewide mercury TMDL, the average mercury effluent concentration from NPDES point sources was estimated as 5 ng/L. The median concentration for North Eastern States was 7 ng/L.” Table N-6 in Appendix N shows that from 2009 through 2015 only seven percent of POTWs and industrial facilities exceeded 12 ng/L in their effluent on an annual basis. In addition, Table N-7 in Appendix N shows that from 2009 through 2015 only twenty-seven percent of POTWs and industrial facilities exceeded 4 ng/L in their effluent on an annual basis.

Appendix T includes several frequently asked questions and answers. Question 16 asks, “Besides mercury, what other substances may require water quality objectives to protect subsistence fishing that could be applied statewide?” The answer lists other bioaccumulatives such as PCBs, dioxins, and pesticides that tend to bioaccumulate in fish tissue. Neither the Staff Report nor Appendix T state that objectives for any of these contaminants “must also be developed.” It is true that objectives for such bioaccumulatives may be considered in the future and such objectives would be protective of subsistence fishers. However, objectives for these contaminants may be considered with or without the development of subsistence fishing beneficial uses. Development of objectives for any of these contaminants is beyond the scope of this project and if developed at some point in the future they would be subject to a separate public process and peer review.

Letter: ACWA1, Pg13, P3	COMMENT	Excerpt: 102	Type: attainability—tertiary treatment
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Although the Staff Report asserts that the proposed 12 ng/L EL “is achievable” with existing secondary treatment technology (with an adjunct mercury source control/minimization program), consistent with the PowerPoint presentation by Thomas Grovhaoug of Larry Walker Associates at the February 7 Hearing, the Technical Report concludes that some NPDES dischargers will not be able to meet this EL without additional upgrades to tertiary treatment. See, Technical Report section 2.

Response: Table N-6 of Appendix N shows that three percent of POTWs and seven percent of all facilities exceeded 12 ng/L on an annual average between 2009 and 2015. Many of these facilities could likely achieve an effluent limit of 12 ng/L through the implementation of pollution prevention programs. However, some of these facilities may need to upgrade to tertiary treatment or add additional filtration to their effluent to meet an effluent limit of 12 ng/L. To estimate potential economic impact of the effluent limits the Economic Analysis assumed that dischargers with secondary treatment currently in place would install tertiary filtration for compliance and dischargers operating tertiary filtration plants that needed mercury reduction would implement pollution prevention programs.			
Letter: ACWA1, Pg13, P3	COMMENT	Excerpt: 103	Type: attainability/economics
This means that secondary treatment facilities must be upgraded to tertiary treatment to meet 12 ng/L consistently enough to avoid enforcement of the EL. However, the Staff Report economic analysis fails to consider the costs of the upgrades, finding instead that for discharges to flowing water bodies that no facility upgrades are required to meet 12 ng/L for the 308 facilities discharging to meet Sport Fish, Prey Fish, and CALT Prey WQOs (see, Staff Report, section 7.2.7 and p. 246).			
Response: Exhibit 14 in the Economic Analysis (Appendix R) of the Staff Report shows that of the 44 facilities with secondary treatment that we have sufficient data to do an analysis; sixty eight percent are meeting an effluent limit of 12 ng/L. In addition, page 46 of Appendix R discusses a detailed study of the fate and transport of mercury at the San Jose/Santa Clara Water Pollution Control Plant. The study found that the average mercury concentration after secondary treatment was 5.2 ng/L. The study noted that the facility has a mercury pollution prevention program in place. Therefore, it is apparent that most facilities with secondary treatment can consistently meet an effluent limit of 12 ng/L if they are implementing pollution prevention programs. In addition, data included in Table N-6 of Appendix N shows that ninety three percent of all facilities in California met an effluent limit of 12 ng/L from 2009 through 2015. Therefore, the Provisions will not require any facility upgrades for most facilities to meet an effluent limit of 12 ng/L. In addition the economics analysis included in its analysis a requirement for secondary treatment facilities to upgrade to tertiary to meet the effluent limits “Given these data, we assumed that most municipal WWTPs operating secondary treatment could upgrade to tertiary treatment and achieve effluent mercury concentrations of 4 ng/L or less.” (See Appendix R-5)			
Letter: ACWA1, Pg14, P1	COMMENT	Excerpt: 104	Type: attainability
Furthermore, the attached Technical Report § 2 summarizes persuasive evidence that even with tertiary treatment, some facilities will not be able to achieve the 4 ng/L EL consistently, thus requiring additional treatment upgrades to advanced technologies such as RO (<i>id.</i>).			
Response: The Economic Analysis (appendix R) concedes that not all facilities that have upgraded to tertiary treatment meet an effluent limit of 4 ng/L total mercury. Exhibit 14 on page 46 of the Economic Analysis shows that 69% of facilities that have tertiary treatment currently consistently meet 4 ng/L. Chapter 7.2.7 of the Staff Report discusses the need for some facilities to implement pollution prevention programs to meet effluent limits and Appendix R includes an analysis of costs for implementing pollution prevention programs. If facilities are not able to meet an effluent limit through tertiary treatment and pollution prevention programs dischargers have a variety of options to set appropriate effluent limits rather than upgrading to expensive advanced technologies. Options include site-specific objectives, site-specific bioaccumulation factors, and dilution credits. In addition the effluent limits would be expressed as annual averages while the economics analysis uses the maximum reported mercury concentration which may have resulted in an over reporting of facilities that would not meet 4 ng/L/ The Provisions have been revised to account for existing TMDLs to allow for effluent limitations to be calculated based on existing mercury TMDLs and the			

development of new mercury TMDLs.			
Letter: ACWA1, Pg14, P1	NOT COMMENT	Excerpt: 105	Type: attainability
This analysis is consistent with information presented in testimony and PowerPoint slides presented by Thomas Grovhaoug of Larry Walker Associates at the Hearing. Thus, many tertiary treatment facilities must implement additional treatment upgrades to meet 4 ng/L consistently enough to avoid enforcement.			
<p>Response: Since most facilities discharge into rivers and streams or other flowing waterbodies and no waters are currently designated with T-SUB or SUB beneficial uses, the majority of facilities would have reasonable potential assessed and potentially need to meet an effluent limit of 12 ng/L. As described on page 9 of the Provisions, an effluent limit of 4 ng/L would only apply to discharges to slow moving water bodies, or discharges into water bodies where the Tribal T-SUB beneficial use is designated. However, if the water body is subject to a TMDL the effluent limits will not apply and the TMDL would specify effluent limits or load allocations based on site-specific conditions. Section 6.13.3 of the Staff Report discusses the issue of achievability of the effluent limits. According to Table N-3a in Appendix N of the Staff Report, approximately seven percent of the dischargers are to estuaries, sloughs, wetlands, tidal prisms, ponds, and marshes, which might be classified as slow moving waters. The determination of fast moving or slow moving water in bays and estuaries would be up to the determination of the Permitting Authority and the Permitting Authority may determine that some or all of the discharges into estuaries and bays are into fast moving waters or they may be into waters already subject to a TMDL. The effluent limit of 4 ng/L would also apply to discharges to fast moving waters if they are designated with the T-SUB beneficial use. Since no waters have been designated with T-SUB to date, no facilities that discharge into fast moving waters would be required to meet an effluent limit of 4 ng/L, upon adoption of the Provisions. It is unknown how many waters may be designated with the T-SUB or SUB beneficial uses in the future and any estimate would be speculative. In the future some waters may be designated with the T-SUB or SUB beneficial uses, but the number of potentially affected dischargers is unknown. The Economic Analysis looked at the percent of facilities that meet an effluent limit of 4 ng/L with tertiary treatment that consist solely of filtration; none of the facilities employ treatment technologies such as reverse osmosis or ion exchange. Of these facilities, roughly 70 percent can meet an effluent limit of 4 ng/L or less. Therefore, it is probable that the majority of facilities that will be required to meet an effluent limit of 4 ng/L will be able to meet that limit through tertiary filtration alone. For those facilities that cannot meet a 4 ng/L effluent limit through tertiary treatment a facility may choose to implement expensive technologies, such as reverse osmosis or ion exchange, but the Provisions offer a cost effective alternative of implementing pollution prevention programs to reduce the mercury load of the waste water prior to treatment. If the combination of tertiary treatment and pollution prevention programs is not effective in meeting the effluent limit the Provisions allow dilution credits, site-specific objectives, and site-specific bioaccumulation factors to provide a more achievable target. In addition, Please see Responses to Comments WSPA2-54, and 61.</p>			
Letter: ACWA1, Pg14, P1	COMMENT	Excerpt: 106	Type: economics—facility upgrade
Again, however, the Staff Report fails to consider these costs in their entirety, finding instead that facilities may need, at most, to upgrade to tertiary treatment to assure that discharges to slow moving waters consistently meet Sport Fish, Prey Fish, and CLT Prey WQO and discharges to flowing water bodies consistently meet T-SUB of 4 ng/L <i>see</i> , Staff Report, section 7.2.8).			
Response: As discussed in Chapter 7.2.7 and Appendices N and R of the Staff Report most facilities can meet an effluent limit through a			

<p>combination of tertiary treatment and pollution prevention programs. Upon adoption of the provisions and upon renewal of their permits most facilities will have reasonable potential based on the water column translator of 12 ng/L and if reasonable potential is assigned an effluent limit of 12 ng/L. If however a facility is required to and cannot meet an effluent limit of 4 ng/L they can work with the Permitting Authority to consider a variety of options including dilution credits, site specific objectives, and site specific bioaccumulation factors to provide a more achievable target. In addition, Please see Responses to Comments WSPA2-54 and 61.</p>			
Letter: ACWA1, Pg14, P2	COMMENT	Excerpt: 107	Type: economics/attainability
<p>In addition, pursuant to the Technical Report § 2, and as presented in testimony and PowerPoint by Thomas Grovhaoug of Larry Walker Associates at the Hearing, a new, as yet undeveloped treatment technology is required to consistently meet 1 ng/L. The Staff Report concurs with this conclusion, finding discharges to slow moving waters to meet T-SUB and CLT Prey Fish EL of 1 ng/L may require major, but unspecifiable facility upgrades (Staff Report, section 7.2.9).</p>			
<p>Response: The Staff Report does point out in Chapter 7.2.9 that an effluent limit of 1 ng/L would likely only be met through major facility upgrades to most facilities. However, Table N-8 in Appendix N does show that twenty-seven percent of all facilities, including twenty five percent of POTWs are meeting an annual average of 1 ng/L, so not all facilities would need major upgrades to meet a 1ng/L effluent limit. Chapter 7.2.9 also points out that since neither the T-SUB nor SUB beneficial uses have been designated to any waters an effluent limit would not be required by any dischargers upon adoption of the Provisions. Chapter 7.2.9 further points out that if the T-SUB or SUB beneficial uses are designated to any slow moving waters there are a variety of options other than meeting an effluent limit of 1 ng/L. The Water Boards may use compliance schedules, variances, site-specific objectives, or site-specific bioaccumulation factors, and dilution credits. Therefore, it is speculative to assume that facilities will be required to implement any new, yet undeveloped treatment technologies to comply with mercury effluent limits.</p>			
<p>In addition, Please see Responses to Comments WSPA2-54 and 61.</p>			
Letter: ACWA1, Pg14, P2	COMMENT	Excerpt: 108	Type: Economics
<p>Nevertheless, as documented in Section 2 of the Technical Report, the Staff Report fails to fully consider the costs associated with development and implementation of new technologies necessary to comply with the proposed ELs. Even by the State Water Board’s own estimates, the economic impact of compliance is potentially quite high – source control, BMPs, and treatment controls, e.g., RO – and these costs are understated as outlined above.</p>			
<p>Response: As discussed in Chapter 6.13.3 of the Staff Report, discharges into streams, rivers, and other fast moving water bodies would need to meet an effluent limit of 12 ng/L. Since the majority of facilities in California discharge into rivers or other fast moving waters, approximately ninety-three percent of the dischargers would need to meet an effluent limit of 12 ng/L. Other dischargers would need to meet an effluent limit of 4 ng/L. As described in Tables N-6 and N-7 of Appendix N, ninety-three percent of dischargers are meeting an effluent limit of 12 ng/L, on an annual average and seventy-three percent are meeting an annual average effluent limit of 4 ng/L. As discussed on page 46 of the Economic Analysis (Appendix R) an effluent limit of 4 ng/L is achievable through a combination of tertiary treatment for POTWs, or end of the pipe filtration for industrial dischargers in combination with pollution prevention programs. The Economic Analysis considered the costs if all POTWs needed to upgrade to tertiary treatment or industrial dischargers needed to install end of pipe filtration and all dischargers needed to</p>			

implement pollution prevention programs. Therefore, the Economic Analysis did do a thorough job of considering the potential economic impacts of the Provisions.			
Letter: ACWA1, Pg14, P3	COMMENT	Excerpt: 109	Type: Insignificant Discharges
Further, no known technologies are available to deploy to treat geographically dispersed discharges in compliance with the ELs, <i>e.g.</i> , discharges pursuant to individual non-stormwater NPDES permits issued for activities such as dewatering, testing, hydrant flushing, groundwater treatment, and remediation.			
Response: Chapter IV.D.2.e. of the Provisions provides two exceptions to the reasonable potential analysis. These exceptions are to small disadvantaged communities and insignificant discharges. Chapter 6.13.3 of the Staff Report states that, “Insignificant discharges are discharges determined by the permit writer to be a very low threat to water quality, such a small, non-continuous discharges.” The Permitting Authority is authorized to exempt insignificant discharges. Activities such as dewatering, testing, hydrant flushing, groundwater treatment and remediation all qualify to be exempted as insignificant discharges. For any similar discharges that are not exempted pollution prevention programs may be appropriate and are considered in the Economic Analysis.			
Letter: ACWA1, Pg14, P3	COMMENT	Excerpt: 110	Type: Economics
Nevertheless, the Staff Report fails to fully consider the costs associated with invention, development, and deployment of new, as yet undefined technologies necessary for such discharges to comply with the proposed ELs.			
Response: As discussed in Chapter 7.2.7 of the Staff Report and on pages 45 and 46 of Appendix R, tertiary treatment or end of pipe treatment in conjunction with pollution prevention programs should be sufficient to meet an effluent limit of 4 ng/L for mercury. Upon adoption, no dischargers will be required to meet an effluent limit of 1 ng/L. If in the future, a discharger is required to meet an effluent limit of 1 ng/L and tertiary treatment in conjunction with pollution prevention programs is not sufficient to meet the effluent limit then there are a variety of other options, such as variances, rather than inventing, developing, and deploying new, yet undefined technologies. In addition, it is not possible to do an economic analysis on implementing technologies that do not exist.			
Letter: ACWA1, Pg14, P4	COMMENT	Excerpt: 111	Type: attainability—technology
Finally, the proposed ELs are well below currently applicable MLs for mercury of 0.5 µg/L and 0.2 µg/L (500 ng/L and 200 ng/L). At a minimum, new and more expensive monitoring methods and equipment must be implemented by dischargers and significant cost and expense to address detection at levels far below existing MLs.			
Response: U.S. EPA has developed methods for sample low concentrations of mercury. Methods are listed in Table O-1 in Appendix O. Chapter P.2.3 of Appendix P explains that Board staff contacted several labs to obtain an estimate of the costs for the different testing methods. Costs were obtained for methods 245.1 (which has a detection limit of 200 ng/L), 245.7 (which has a detection limit of 5.0 ng/L, and 1631 (which has a detection limit of 0.5 ng/L). Estimates for method 245.1 ranged from \$18 to \$35. Estimates for method 1631 ranged from \$115 to greater than \$200. Method 1631 also requires the clean hands technique that may add another \$100 to \$150 to the sampling cost. Chapter IV.D.2.d.2) of the Provisions specify that dischargers with effluent limitations that are authorized to discharge at a rate of 5 MGD or greater must conduct quarterly routine monitoring. Using the higher estimates received from labs that were contacted, the total annual monitoring costs for a discharger with effluent limits that is authorized to discharge at a rate of 5 MGD or greater would be \$ 1,400 per year. The estimated annual			

total mercury effluent monitoring costs are included in Exhibit 16, on page 48 of Appendix R.			
Letter: ACWA1, Pg14, P4	COMMENT	Excerpt: 112	Type: Economics
Nevertheless, as documented in Section 2 of the Technical Report, the Staff Report fails to fully consider the costs associated with adoption of new monitoring technologies necessary to assure compliance with the proposed ELs.			
Response: Please see Response to Comment to ACWA1-111.			
Letter: ACWA1, Pg14, P5	COMMENT	Excerpt: 113	Type: Economics
We urge the State Water Board to consider the substantial evidence provided in the attached Technical Report indicating that treatment technologies for water treatment and wastewater treatment plants alone would cost ratepayers far more than currently estimated in the Staff Report. Further, increased costs of monitoring and upgrades to tertiary treatment, as well as development of new technologies to consistently meet the proposed ELs are not included in the Staff Report economic analysis, but will be expensive.			
Response: Please see Responses to Comments ACWA1-105, 106 ,and 107.			
Letter: ACWA1, Pg14, P5	COMMENT	Excerpt: 114	Type: attainability/economics
Unfortunately, despite the significant economic costs of meeting the ELs, all of which must be borne by water and wastewater ratepayers, only a very small reduction in mercury pollution can be anticipated to result because discharges are such a small source of mercury, and the ELs will not result in attainment of the proposed WQOs.			
Response: Chapter 4.4 of the Staff Report does point out several other significant sources of mercury other than NPDES permitted dischargers. The chapter also points out that for some TMDLs such as the San Francisco Bay and the Sacramento San Joaquin Delta TMDLs the major sources are from legacy mining and point source discharges play a very small role in the exceedance of the objectives. However, these are large waterbodies dominated by waters that are connected to major gold and mercury mines. In other waters, like smaller effluent dominated creeks, point source discharges are a major source of mercury into the system and play an important role in determining the waterbodies compliance with mercury fish tissue objectives.			
Letter: ACWA1, Pg15, P1	COMMENT	Excerpt: 115	Type: economics
Because all available evidence supports a conclusion that the designated uses do not currently exist in terms of compliance of waters with the WQOs, it is unreasonable to require dischargers, and particularly the ratepayers of such dischargers, to incur substantial economic control costs to protect mercury conditions. <i>Cal. Ass'n of Sanitation Agencies v. State Water Res. Control Bd.</i> (2012) 208 Cal.App.4th 1438, 1460. The Staff Report fails to articulate why adoption of the WQOs is necessary in these circumstances to assure the reasonable protection of beneficial uses despite the potential adverse economic consequences. <i>Memorandum of William R. Attwater, Office of Chief Counsel of the State Water Resources Control Board Re: Guidance on Consideration of Economics in the Adoption of Water Quality Objectives or Waste Discharge Requirements</i> , pp. 1-2 (Jan 4 1994).			
Response: The beneficial uses of COMM and WILD are widely designated in basin plans as beneficial uses in most of California's waters. These uses are Clean Water Act section 101(a) (2) uses and to remove them where already designated would require a Use Attainability Analysis with sufficient findings under 40 Code of Federal Regulations section 131.10(g). As held by the case cited in the comment, the particular basin plan,			

<p>which contains the designated beneficial use, would have to be amended to change the use designation. (<i>Cal. Ass'n of Sanitation Agencies v. State Wat. Res. Cntrl. Bd.</i> (2012) 208 Cal.App. 1438,1459.) Determining specific waters where the designations may not be appropriate is not within the scope of these provisions. The objectives apply to support the beneficial uses. No evidence has been presented that “supports a conclusion that the designated uses do not currently exist” and such a finding can only be accomplished through a Use Attainability Analysis. The Court in <i>California Association of Sanitation Agencies</i> explained that the State Board’s order at issue in that case stated “where a Regional Board has evidence that a designated use does not exist and likely cannot be feasibly attained, it is unreasonable to require a discharger to incur control costs to protect that use” by citing to Government Code section 11342.2. (Ibid. at 1460.) Nothing in the Provisions would alter that conclusion.</p>			
Letter: ACWA1 , Pg 15 , P 1	COMMENT	Excerpt: 116	Type: Effluent Limits
f) <i>The ELs Create Compliance and Enforcement Risk for NPDES Non-stormwater Dischargers.</i>			
Response: Please see Responses to Comments ACWA1-104, 105, and 108.			
Letter: ACWA1 , Pg 15 , P 1	COMMENT	Excerpt: 117	Type: Economics/Attainability
<p>The unavailability and cost of treatment technologies that can consistently meet the lowest ELs proposed for adoption raise serious concerns regarding risk of liability for significant fines, penalties, and attorneys’ fees as a result of enforcement action or citizens’ suit for permittees discharging under individual non-stormwater NPDES permits and WDRs. This disproportionate regulatory impact and risk of liability is noted in the Staff Report, which discusses inevitable enforcement actions by the water boards or via citizens’ suits for permit violations that will occur where ELs cannot be achieved, and notes these costs will be borne by point source dischargers with individual non-stormwater NPDES permits, despite the relatively minor source of mercury in those discharges as compared to other sources. <i>See</i>, Staff Report p. 153; <i>see also</i>, Technical Report, sections 2 and 3; <i>also as presented</i> in testimony and PowerPoint at the Hearing by Thomas Grovhaoug of Larry Walker.</p>			
Response: Please see Responses to Comments ACWA1-105 and 108.			
Letter: ACWA1 , Pg 15 , P 2	COMMENT	Excerpt: 118	Type: TMDLs
<p>This risk of liability is compounded by limitations on NPDES permit compliance schedules. The Staff Report acknowledges that the mercury WQOs cannot be achieved in the short-term, taking multiple decades, if not a century to attain at minimum. The unattainability of WQOs will, in turn, lead to listing of most waterbodies for mercury impairment, and requirements to develop TMDLs. TMDLs, and particularly the data analyses required to support TMDLs, are extremely time intensive to prepare and approve, often taking at least three years, and many times requiring more than 7 years to fully approve per TMDL.</p>			
<p>Response: State Water Board acknowledges that the goal of this policy is not short term and may take an extended period of time for some of the water bodies affected to come in to compliance. The State Board also acknowledges TMDLs take time and effort. It is appropriate to establish water quality objectives for methylmercury in fish tissue now in order to protect human health and wildlife even if it takes decades to attain the objectives.</p>			
<p>In addition, see Response to Comment ACWA1-39. Mercury has been discharged from legacy mines for decades or even centuries, contaminating sediments in soils along the lengths of associated attendant water bodies. However, choosing to not take any action would force</p>			

<p>the U.S. EPA to promulgate regulations by June 30, 2017 or approve California’s proposed provisions. U.S. EPA has to date been unable to give any indication to the State Water Board that U.S. EPA is able to obtain any extension on the final date agreed upon in the Consent Decree. Should the State Water Board defer to Commenter’s desires and grant an extension, U.S. EPA will not achieve an approval of the rulemaking by the agreed upon date, resulting in automatic promulgation of statewide mercury criteria that satisfy the conditions of the original Services biological opinion. This will leave the entire State of California with objectives and no implementation procedures, in which case current NPDES permits would be regulated under the current SIP, exposing point-source discharges to extremely complicated requirements based on fish tissue objectives that satisfy the ESA requirements for CA Least Tern.</p>			
Letter: ACWA1 , Pg 15 , P 3	COMMENT	Excerpt: 119	Type: SIP/Compliance Schedules
<p>The Provisions do not clearly exempt individual non-stormwater NPDES permits from the SIP, including its limitations on compliance schedules.</p>			
<p>Response: True, the Provisions do not exempt individual non-stormwater NPDES Permit from the SIP on its limitations on compliance schedules. However, the SIPs compliance schedule provisions would not be the applicable to the provisions. The applicable compliance schedule provisions are in Resolution 2008-0025 (see http://waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf)</p>			
Letter: ACWA1 , Pg 15 , P 3	COMMENT	Excerpt: 120	Type: SIP/ Compliance Schedules
<p>The SIP allows only up to five (5) years from the date of issuance, reissuance, or modification of an NPDES permit to complete actions necessary to comply with ELs and no longer than 10 years from the effective date of the SIP (2006) – which is past (2016).² Due to the fact that the Provisions immediately require application of ELs in individual non-stormwater NPDES permits to implement the Non-Tribal/Non-Subsistence-related WQOs, facilities will be required to begin upgrades to treatment processes and/or facilities soon after adoption of the Provisions.³ See, e.g., Staff Report, pp. 177-180; Technical Report § 2.</p>			
<p>Response: Please see Response to Comment ACWA-CWA1-119. The SIP Compliance schedule provisions are not applicable to the Mercury Provisions.</p>			
Letter: ACWA1 , Pg 16 , P	COMMENT	Excerpt: 121	Type: SIP/Compliance Schedules
<p>It is unlikely that dischargers can plan, design, engineer, environmentally review, permit, fund, and construct the necessary upgrades within a five year permit term or the (maximum) five year compliance schedule period available under the SIP. However, the Staff Report does not identify interim actions or compliance schedule authority that individual NPDES non-stormwater dischargers can rely on to assure compliance before TMDLs can be fully adopted. The maximum compliance schedule limitations of the SIP also preclude post-TMDL compliance schedules for individual non-stormwater NPDES permits of sufficient length to provide dischargers compliance assurance, but the Staff Report fails to identify actions to implement to remain in compliance with NPDES permits over the course of the decades it will take to achieve the proposed WQOs.</p>			
<p>Response: The Provisions do not prevent the Regional Boards from providing appropriate and applicable compliance schedules in accordance with the Policy for Compliance Schedules in National Pollutant Elimination System Permits (Resolution 2008-0025) or time schedules in accordance with the SIP if included in the NPDES Permit and in accordance with California’s Water Code Sections 13300, 13301 or 13303, if included in an enforcement Order. Therefore, the Regional Boards should be able to provide the necessary and appropriate time for dischargers to come into compliance with any applicable mercury effluent limitation.</p>			
Letter: ACWA1 , Pg 16 , P 1	COMMENT	Excerpt: 122	Type: SIP/ Compliance Schedules

Responses to Comments—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 Mercury Provisions.

<p>For these reasons, we recommend the Provisions expressly exempt from the SIP all individual non-stormwater NPDES permits regulated under the Provisions to allow sufficient permit compliance schedules before, during, and after development of mercury TMDLs. Such exemption may be intended since Section 10.2 of the Staff Report appears to indicate that timelines for permit compliance schedules should be established pursuant to the State Water Board’s Resolution 2008-0025, <i>Policy for Compliance Schedules in NPDES Permits</i>.</p>			
<p>Response: Compliance Schedules would be established in accordance with Resolution 2008-0025 and not the SIP.</p>			
Letter: ACWA1, Pg16, P2	COMMENT	Excerpt: 123	Type: compliance—TMDLs
<p>However, Resolution 2008-0025 also limits the duration of permit time schedules. Specifically, section 6(b) of Resolution 2008-0025 caps compliance schedules at a maximum of 10 years absent the development of a TMDL. Given the large number of TMDLs that will be required to address the very low WQOs and the typical length of time required to prepare and fully approve a TMDL, it is unlikely that 10 years will be sufficient permit compliance schedule protection during the development of all TMDLs as necessary to protect dischargers and their ratepayers from liability risk associated with enforcement actions and citizen suits.</p>			
<p>Response: Should 10 years not be sufficient the Water Boards may, as appropriate grant Time Schedule orders. Please see Response to Comment ACWA-CWA1-121.</p>			
Letter: ACWA1, Pg16, P3	COMMENT	Excerpt: 124	Type: Compliance Schedules
<p>Federal regulations require that a State must authorize the use of schedules of compliance for water quality based effluent limits in NPDES permits if they plan to allow such schedules. 40 CFR § 131.11(j)(1). Therefore, we urge the State Water Board to modify the Provisions to provide clear permit compliance schedule authority and to allow compliance schedules of longer duration than currently permitted by Resolution 2008-0025.</p>			
<p>Response: Please see Responses to Comments ACWA1-119, 120, 121 and 122.</p>			
Letter: ACWA1, Pg16, P4	COMMENT	Excerpt: 125	Type: compliance protections
<p>3. Additional Recommended Compliance Protections for Dischargers.</p> <p>While compliance schedule authority is critical to protecting dischargers subject to individual non-stormwater NPDES permits from the disproportionate risk of enforcement and third party citizen suit liability that they face under the current Provisions, dischargers also need long-term compliance protections due to the substantial period of time that the Staff Report states will be necessary to achieve meaningful reductions in mercury in receiving waters. Accordingly, it is incumbent on the State Water Board that it include in its order adopting the Provisions an implementation program that offers compliance protections that are real and</p>			
<p>Response: Pleases see Responses to Comments ACWA1-119, 120, 121 and 122.</p>			
Letter: ACWA1, Pg17, P1	COMMENT	Excerpt: 126	Type: Compliance/ UAA
<p>The Water Agencies propose to work in coordination with the State Board to explore appropriate development of the following long-term compliance protections for dischargers: completion of Use Attainability Analyses (UAAs) to establish temporary water quality objectives for mercury prior to imposition of ELs; authorization for development of mercury site specific objectives (SSO) for all beneficial uses (not just SUB); general authorization for development and use of variances for NPDES permits and WDRs; and general authorization for use of dilutions credits for NPDES permits and WDRs.</p>			

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Response: For a response to the suggestion regarding Use Attainability Analyses, Please see Responses to Comments WSPA2-7 and CVCWA1-37. For the suggestion regarding site-specific objectives, Please see Response to Comment ACWA1-28. For the suggestion, regarding variances Please see Response to Comment ACWA1-27. For the suggestion regarding dilution, credits Please see Response to Comment ACWA1-30.			
Letter: ACWA1, Pg17, P1	COMMENT	Excerpt: 127	Type: UAA
a) <i>Use Attainability Analyses.</i>			
According to staff in the January 9 Workshop and EPA surveys, UAAs4 are rarely (if ever) approved in California. However, it is not clear why UAAs are not used in California given that the federal Clean Water Act provides for preparation of a UAA most importantly for this case when a use is not an existing use because the water quality standards necessary to support it are not attained, and attainment of the use and WQO is infeasible. 40 CFR §§ 131.3(e), 131.10(d); 131.10(g). More specifically, federal regulations state that that states may permanently or temporarily remove or relax water quality standards if the state can demonstrate that attaining the designated use is not feasible because:			
(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or ***			
(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied...; or ***			
(5) Physical conditions related to the natural features of the waterbody...unrelated to water quality, preclude attainment of aquatic life protection uses; or			
(6) Controls more stringent than those required by section 301(b) and 306 of the Act would result in substantial and widespread economic and social impact. 40 CFR § 131.10(g).			
Response: Please see Responses to Comments CVCWA1-7, 37 ,and ACWA1-128.			
Letter: ACWA1, Pg17, 2	COMMENT	Excerpt: 128	Type: UAA
Further, 40 CFR § 131.10(j) provides that states are actually required to conduct UAAs when designating uses not included in the fishable/swimmable uses specified in CWA section 101(a)(2)). Prey Fish and CLT Prey Fish uses are not fishable/swimmable uses, but are instead wildlife protection related uses.			
Response: Please see Responses to Comments WSPA2 -7, and CVCWA1-7 and 37.			
Letter: ACWA1, Pg18, P1	COMMENT	Excerpt: 129	Type: UAA
USEPA guidance provides that when waters do not meet water quality standards promulgated under the Clean Water Act, and the problems have been produced over many years and it may take many years and substantial changes in resource management to implement desired water quality standards, UAAs are an appropriate tool, conducted alone or in conjunction with the TMDL process, to allow for use attainability over time. <i>UAAs and Other Tools for Managing Designated Uses</i> , Preface p. iv (USEPA March 2006) (UAA Guidance). UAAs are appropriate not only to remove a use that is not an existing use, but perhaps more importantly for this situation, UAAs are appropriate for establishing temporary water			

quality standards, including WQOs, where the goal of the temporary water quality standards is to ultimately, over time, improve water quality to the point where designated uses are fully supported. UAA Guidance, Montana’s Temporary Water Quality Standards, at p. ix.			
Response: Comment noted. Please see Responses to Comments WSPA2-7, CVCWA1-7 and 37.			
Letter: ACWA1, Pg18, P1	COMMENT	Excerpt: 130	Type: UAA
As such, temporary WQOs play a key role in the remediation of damaged water resources. <i>Id.</i> The duration of temporary standards is set based on an estimate of the time needed to remediate water resources, and, because clean-up of legacy pollutants takes time, temporary standards can be and are issued for multiple years. <i>Id.</i> , p. x. States need only to authorize UAAs to use them to set temporary water quality standards as part of a long program of resource management actions designed to improve water quality. <i>Id.</i> , p. ix.			
Response: Please see Responses to Comments WSPA2-7, CVCWA1-7, and 37.			
Letter: ACWA1, Pg18, P2	COMMENT	Excerpt: 131	Type: UAA
Pursuant to the Staff Report, all of the conditions required by regulation to allow, and even to require, conducting UAAs to establish temporary mercury WQOs are satisfied. Accordingly, we urge the State Board to adopt authorization for water boards to conduct such UAAs, and to include in the Provisions a requirement that regional boards shall conduct such UAAs prior to conducting an RPA for mercury or applying ELs in individual non-stormwater discharge Permits.			
Response: Please see Responses to Comments WSPA2-7, CVCWA1-7 and 37.			
Letter: ACWA1, Pg18, P2	COMMENT	Excerpt: 132	Type: UAA
Adopting authority and directing Regional Boards to develop, consider, and where appropriate, to approve UAAs to establish temporary WQO is particularly important given the “mass designation” approach that the State Water Board is following, and the adoption of very low WQOs for all water bodies without considering the natural background conditions applicable to each waterbody or hydrological unit, and without considering the degree to which water quality factors leading to exceedances of the proposed objectives in that hydrographic unit are, or are not controllable. If those factors are not considered now, when adopting WQOs, the only vehicle for consideration of those factors is via a UAA once it is demonstrated the water body cannot comply for the reasons set forth in federal law. A UAA is also the only vehicle available for long-term relief from WQOs and ELs for the entire duration it may take to attain WQOs.			
Response: The Provisions do not propose to establish a mass designation. The Provisions would establish uniform water quality objectives for specific beneficial uses. Contrary to the comment, a UAA would not be the only way to obtain the WQOs. In addition to a UAA site specific objectives may be developed or TMDLs may be established to aid in attaining the WQOs where they are currently not being attained. In addition, please see Responses to Comments WSPA2- 7, CVCWA1-7 and 37.			
Letter: ACWA1, Pg18, P3	NOT COMMENT	Excerpt: 133	Type: Description of Reg
Federal regulations (40 CFR § 131.11), Cal. Wat. Code § 13241, and Section 5.2 of the SIP authorize the development of SSOs based on scientifically defensible methods appropriate to the situation and circumstances found in particular regions and waterbodies. The Provisions and Staff Report currently support and authorize regional boards to develop SSOs for the protection of Subsistence Fishing uses because SSOs will more effectively take into account natural conditions and controllable versus uncontrollable water quality factors in the waterbodies for which they are developed, as well as local and regional fish consumption patterns. In fact, this rationale supports authorization and direction to			

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consider mercury SSOs for the protection of all beneficial uses, including, COMM, WARM, COLD, WILD, RARE, EST, MAR, and SAL.			
Response: There is nothing that prohibits the Water Boards from developing site specific objectives and no implementing regulation is necessary to allow such development.			
Letter: ACWA1, Pg19, P	COMMENT	Excerpt: 134	Type: site-specific objectives (SSO)
We therefore urge the State Water Board to consider amending the Provisions to advise Regional Boards that it is appropriate to consider adoption of SSOs to replace all the WQOs in light of all the different beneficial uses they are designed to protect in order to better account for local ambient conditions for mercury in each region, subregion or waterbody.			
Response: Please see Response to Comment ACWA1-28.			
Letter: ACWA1, Pg19, P1	NOT COMMENT	Excerpt: 135	Type: Variances
<i>c) Variances.</i>			
On August 21, 2015, the EPA published its water quality standards regulation (80 FR 51020), including water quality standards variances (40 CFR § 131.14). The rule explicitly authorizes the use of water quality standards variances pursuant to Clean Water Act sections 101(a) and 303(c)(2) in the same circumstances as those discussed above for UAAs. The federal regulations specify that variances are appropriate when pollutants are persistent in the environment and lack economically feasible control options (80 FR 51020, p. 25).			
Response: Comment noted. The Water Boards have the discretion to adopt variance pursuant to the cited federal regulations.			
Letter: ACWA1, Pg19, P2	NOT COMMENT	Excerpt: 136	Type: Variances
Like UAAs establishing temporary WQO, variances allow a state to retain the designated use for a waterbody, but to temporarily relax WQOs or ELs as specified in the variance so long as the variance reflects the highest attainable condition identified at the time of the adoption of the WQS variance. 40 CFR § 131.14(b)(ii) and (iii). The relaxed WQOs may then be used for purposes of establishing interim uses and interim WQOs, as well as for purposes of developing NPDES permit limits and requirements, as well as 401 Water Quality Certification requirements. 40 CFR § 131.14(a).			
Response: Comment noted.			
Letter: ACWA1, Pg19, P2	COMMENT	Excerpt: 137	Type: Variances
Unlike UAAs establishing temporary WQOs, variances with a term greater than five (5) years must be re-evaluated no less than every 5 years, providing less assurance of long-time compliance protection for dischargers. Nevertheless, if any waterbodies may be close to meeting the proposed WQOs, variances may be an appropriate mechanism to use to allow compliance protection for dischargers until new treatment technologies, and particularly those that have yet to be developed, can be identified, planned, designed, environmentally reviewed, permitted, funded and implemented.			
Response: Please see Response to Comments WSPA2-12, and ACWA1-27.			
Letter: ACWA1, Pg19, P3	COMMENT	Excerpt: 138	Type: Variances
However, currently, no consistent statewide mechanism for establishing water quality standards and NPDES permit variances exists; only the			

Central Valley RWQCB has adopted a variance for salinity (see, *Public Scoping Meeting for the Proposed Statewide Water Quality Standards Variance Policy* (Jan. 23, 2017); Resolution No. R5-2014-0074). Adoption of a general variance policy consistent with federal regulations the State Water Board would provide necessary State implementation authority, establish a consistent procedure for adopting variances across the Regional Boards, and alleviate the burden associated with each regional board having to conduct a public outreach and hearing process to amend their respective water quality control plans to provide such implementing authority.

Response: Please see Responses to Comments WSPA2-12, and ACWA1-27.

Letter: **ACWA1, Pg19, P4**

NOT COMMENT

Excerpt: 139

Type: mixing zone/dilution credits

d) Mixing Zones and Dilution Credits.

The Staff Report notes in several places that water boards have the discretion to allow mixing zones and dilutions credits where appropriate. See, e.g., Staff Report p. 10. However, Staff comments at the January 9, 2017 workshop indicated that the Provisions are not intended to allow regional boards to permit mixing zones and dilution credits, and this position is confirmed by a number of statements in the Staff Report indicating that dilution credits and mixing zones “would be allowed but would not be recommended in most situations since mercury is a bioaccumulative compound ...” (p. 156), and shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable WQOs. Staff Report Appendix A, p. A-11. As a matter of practice, mixing zones and dilution credits are not available statewide; they are never applied, at least in Southern California, despite Precedential Order 2001-006, which provides that mixing zones are allowed even in water bodies listed as impaired. Cf., Staff Report pp. 176, 179, 182, 184 (water boards have the discretion to allow dilution credits in waters that currently meet applicable water quality standards). Pursuant to Order 2001-06, a key consideration in determining to establish a mixing zone and/or dilution credit, even for a listed water body, should be a determination of whether even the elimination of a bioaccumulative pollutant from discharges would have had no effect on pollutant concentrations in the waterbody or in fish.

Response: The Provisions (Chapter IV.D.2.c.2) provided, “Dilution shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable Mercury Water Quality Objectives.” There is an important factor in the consideration of dilution credits and mixing zones, and that is whether the receiving water has additional assimilative capacity or not to provide dilution for a specific water quality objective. The Provisions’ disallowance of the credit addresses that element by specifying that if the fish tissue mercury water quality objective is exceeded in the receiving water under evaluation by the permit writer, then assimilative capacity has been used up and thus no dilution can apply for the calculation of effluent limits. Furthermore, the conclusion whether a waterbody exceeds the applicable fish tissue mercury water quality objective will be based on site-specific data of the receiving water and at the discretion of the Regional Board. In Order WQ 2001-06, the State Water Board concluded that a Clean Water Act Section 303(d) listing alone was not a sufficient basis on which to determine a water body lacks assimilative capacity for an impairing pollutant because the listing may be based on outdated information or information that does not represent water quality conditions throughout the water body (Order WQ 2001-06, pp. 17, 20.) The Provisions, however, do not disallow a dilution credit based on a Section 303(d) listing but disallows a dilution credit where the fish tissue in the receiving water exceeds the applicable fish tissue objective. Such information from the receiving water would constitute current information, not dated, and would be based on the receiving water of the water body under evaluation in the permit action. However, because the State Water Board’s

<p>rationale for its conclusion was due to the concern that the Regional Water Boards must be able to observe and evaluate all pertinent ambient water quality data and site-specific information and on which to base its decision to develop effluent limitations (Order WQ 2001-06, p. 20), revisions have been made to the Provisions (Chapter IV.D.2.c.2) to account for potential additional site-specific information the permit writer may consider to determine a dilution credit is appropriate.</p>			
Letter: ACWA1, Pg20, P1	COMMENT	Excerpt: 140	Type: mixing zones/dilution credits
<p>With respect to mercury, the Staff Report and the Technical Report establish that even if all individual non-stormwater NPDES permit discharges were eliminated, reductions in mercury sufficient to attain waterbody compliance with WQOs would not result. Therefore, we urge the State Board to amend the Provisions to expressly authorize the application of mixing zones and dilution credits in circumstances such as those analyzed in Order 2001-06.</p>			
<p>Response: Please see Response to Comment ACWA1-139.</p>			
Letter: ACWA1, Pg20, P2	COMMENT	Excerpt: 141	Type: implementation
<p>4. Recommended Additional Implementation Program Measures. We also recommend bolstering the currently insufficient implementation program by considering and adopting additional implementation measures that will lead to meaningful reduction in mercury in the state’s waters and fish, and some of which may be appropriate to offer as alternative compliance pathways for dischargers. The additional measures should be specifically focused on measures and the development of information and technologies capable of addressing mercury in the environment.</p>			
<p>Response: Please see Response to Comment ACWA1-31.</p>			
Letter: ACWA1, Pg20, P2	COMMENT	Excerpt: 142	Type: implementation
<p>We recommend for additional study and consideration six possible additions to the implementation program that the water organizations and member agencies would like to work with Staff to explore:</p> <ol style="list-style-type: none"> 1. New or more effective control methods for historic mines and tailings; 2. Regional solutions and programs particularly for nonpoint source implementation measures, and which may involve the engagement of other state agencies; 3. Trading/offset programs to allow funding of measures to address actual sources of mercury; 4. A “water funds” approach to support development of studies and pilot projects for design, testing and evaluation of new technologies and control measures that would better target mercury in the environment, including nonpoint source runoff from open space and areas of elevated mercury, wetlands, and sediment; 5. Coordinated development of state funded control programs among the State Board, local agencies, and CARB to address aerial deposition; and 			

6. Interventions to protect human health developed in other nations dependent upon subsistence fishing, such as Brazil (Passos <i>et al.</i> 2007).			
Response: Please see Response to Comment WSPA2-83. In addition, chapter 6, Sections 6.9 through 6.14 of the Staff Report considers and provide an analysis of the various issues and options related to control of various sources of mercury and exposure.			
Letter: ACWA1 , PgB21, P1	COMMENT	Excerpt: 143	Type: implementation
E. Insufficiency of Certain Proposed Implementation Measures.			
The Staff Report and Mercury Provisions fail to identify and analyze certain reasonably foreseeable compliance methods/management measures, including those imposed on stormwater and wetlands discharges at the discretion of water boards in areas of elevated mercury.			
Response: Please see Responses to Comments ACWA1-145 and ACWA-CWA1-146.			
Letter: ACWA1 , Pg21, P2	NOT COMMENT	Excerpt: 144	Type: implementation
1. Stormwater Implementation Program Measures.			
The Provisions impose new requirements as a part of the implementation program on both MS4 and industrial stormwater discharges. Certain mercury control BMPs are specified for inclusion in MS4 permits, and new, much lower action levels are imposed on industrial stormwater permit discharges.			
Response: Comment noted.			
Letter: ACWA1 , Pg21, P2	COMMENT	Excerpt: 145	Type: implementation
However, the Staff Report fails to evaluate the likelihood that the additional MS4 Permit measures specified may reasonably lead to reductions of mercury in receiving waters.			
Response: As explained in Section 7.2.5 of the Staff Report <i>“The requirements for MS4 dischargers in the Provisions are already required by permits for most MS4s, but not explicitly for mercury control or prevention...”</i> Thus these are not additional requirements, and not necessary to demonstration the reduction of mercury in receiving water.			
Letter: ACWA1 , Pg21 P2	COMMENT	Excerpt: 146	Type: attainability/CEQA
Further, the Staff Report fails to identify any treatment technologies that might be available to implement on a geographically dispersed basis to control urban runoff in a manner that would effectively reduce mercury in receiving waters. Because no treatment technologies are identified or evaluated for assuring that industrial stormwater permits meet the new mercury action levels, the Staff Report’s substitute environmental analysis of potential impacts of such technologies is missing contrary to the requirements of CEQA that environmental impacts of all reasonably foreseeable pollution control technologies required by mandate must be analyzed. Cal. Code Regs. tit. 14, § 15126.2.			
Response: The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) is required to include an environmental analysis of the reasonably foreseeable methods of compliance with the Provisions. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4); Pub. Resources Code, § 21159, subd. (a)). The State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the			

manner in which they will comply. The environmental analysis is only required to account for a reasonable range of environmental, economic, and technical factors (Cal. Code Regs., tit. 23, § 3777, subd. (c); Pub. Resources Code, § 21159, subd. (d)).

A description of the reasonably foreseeable methods of compliance and/or compliance actions is contained in Chapter 7 of the Staff Report and the environmental analysis of the reasonably foreseeable methods of compliance is contained in Chapter 8 of the Staff Report.

Section 8.1.2 of the Staff Report offers a detailed explanation of the level of environmental impact analysis performed and the regulatory basis of that analysis.

Chapter 7 of the Staff Report also describes additional compliance methods and/or compliance actions which are anticipated, including incorporation of waste collection programs, educational programs, internal surveys, sediment controls, and exceedance response actions (such as introduction of BMPs). The additional compliance methods and actions described in Chapter 7 are anticipated to constitute the majority (if not all) of the foreseeable compliance methods required. The State Water Board is not required to engage in speculation or conjecture in order to evaluate site-specific and facility-specific technological approaches, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply (Cal. Code Regs., tit. 14, § 15204, subd. (c) and tit. 14, § 15126.6, subd. (f)(3)).

Finally, the Staff report states: “The Provisions require Phase I and Phase II MS4s permits to include mercury pollution prevention and pollution control measures to reduce total mercury or methylmercury discharges. 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 and there would be little to no change for Phase I MS4s. Phase II MS4s generally have fewer requirements, so it is estimated that some Phase II MS4s may need to add some of the activities described below

Letter: ACWA1, Pg21, P2	COMMENT	Excerpt: 147	Type: Effluent Limits/Violations
Further, the new implementation program’s regulatory requirements applicable to MS4 and industrial stormwater permits raise serious risk of enforcement and third party citizen suit liability for stormwater permittees. Upon adoption, the new, stringent, and unattainable WQOs will become MS4 permit and industrial stormwater permit “receiving water limitations.” As a result, any MS4 or industrial stormwater discharges that “cause or contribute to an exceedance of the mercury WQOs” would create a receiving water limits violation for permittees.			
Response: As stated in the Provisions Chapter IV.D.3.b., the storm water MS4 discharge permits only need to comply with the narrative requirements in the Provisions. Industrial Stormwater Discharges are subject to the Numeric Action Level (NAL) proposed in the Provisions Chapter IV.D.3.c, which is not a water quality objective, or receiving water limitation, however the Staff Report explains that by meeting this NAL, industrial dischargers will satisfy the water quality-based requirements for mercury in the IGP. Other than that, the NAL will act no differently than any of the other NALs in the Industrial General Permit (IGP).			
Letter: ACWA1, Pg21, P2	COMMENT	Excerpt: 148	Type: attainability/violations
The vast majority, if not all inland surface waters, enclosed bays and estuaries will exceed the new WQOs for mercury, creating the risk of liability under industrial and MS4 stormwater permit receiving water limitations, regardless of the significance (or relative insignificance) of			

mercury contributions associated with those discharges.			
Response: Please see Response to Comment ACWA1-147.			
Letter: ACWA1, Pg21, P3	COMMENT	Excerpt: 149	Type: attainability/compliance
To attempt to maintain compliance in light of such receiving water limitations, MS4s and industrial dischargers will be required to expand the reasonable assurance analysis mandated by the permits to attempt to show what the Staff Report could not—that the BMPs deployed to control mercury are reasonably likely to bring receiving waters into compliance with the WQOs.			
Response: Please see Response to Comment ACWA1-147. Industrial storm water dischargers are not required to perform the reasonable potential analysis.			
Letter: ACWA1, Pg21, P3	COMMENT	Excerpt: 150	Type: Economics/Stormwater
In addition, costs of watershed management plans (WMPs) and industrial stormwater pollution prevention plans (SWPPPs) will increase to attempt to control mercury as required by new mercury “receiving water limitations.”			
Response: Please see Response to Comment ACWA1-147. If mercury is a potential pollutant at an industrial facility, the SWPPP should already address mercury according to the Industrial General Permit’s requirements.			
Letter: ACWA1, Pg21, P3	COMMENT	Excerpt: 151	Type: Economics/Stormwater
As WMPs and SWPPPs are modified, new control measures for mercury in urban and industrial stormwater will have to be implemented, even though there are no effective treatment practices or technologies, thus imposing costs for invention, development and implementation of new mercury stormwater control technologies, despite the fact that stormwater discharges are very small sources of mercury.			
Response: Please see Response to Comment ACWA1-147. If mercury is a potential pollutant at an industrial facility, dischargers should already be doing all that they can to address mercury according to the Industrial General Permit’s requirements. In addition, it is recommended that treatment controls are to be a last resort to pollutant control. Initially dischargers should be implementing source control measures that can reduce the discharge of mercury a lot more effectively than treatment controls (i.e. overhead coverage, good housekeeping, material substitutions, etc.)			
Letter: ACWA1, Pg21, P3	COMMENT	Excerpt: 152	Type: Receiving Water Limitations/Stormwater
The Provisions should be modified to clarify that mercury WQOs should be excluded from receiving water limitations in both MS4 permits and the Industrial General Stormwater permit.			
Response: Please see Response to Comment ACWA1-147. WQOs are subject to receiving water bodies and not the specific permits being issued.			
Letter: ACWA1, Pg22, P1	NOT COMMENT	Excerpt: 153	Type: Description of Reg
2. Wetland Mercury Control Measures.			
The draft Provisions address wetlands by providing discretionary control to water boards to use existing law to implement mercury controls in areas with elevated mercury concentrations. The draft Provisions include examples of design features and management measures to reduce the			

production of methylmercury in the wetland that water boards “should consider requiring.” Staff Report § 6.10.3.			
Response: Comment noted.			
Letter: ACWA1, Pg22, P1	NOT COMMENT	Excerpt: 154	Type: Description of Reg
Yet the Staff Report, including the Wetlands Appendix Q, emphasizes that the science on mercury/methylmercury controls is not advanced enough to provide BMPs that will clearly reduce mercury or methylmercury in most situations. Further, the relative importance of the many factors that can influence mercury chemistry can vary from site to site. <i>See</i> , Technical Report section 8. This is why the Staff Report states that the science on mercury/ methylmercury controls is not advanced enough to provide BMPs that will clearly reduce mercury or methylmercury in most situations.			
Response: Comment noted.			
Letter: ACWA1, Pg22, P2	NOT COMMENT	Excerpt: 155	Type: Description of Reg
The Staff Report provides, “New wetland projects (creation or restoration of wetlands) should not be prevented because of mercury concerns. However, wetland projects should be done in [a] manner to reduce unintended impacts. If practicable, new wetlands should not be created in areas with high levels of mercury.” (p. 136)			
Response: Comment noted.			
Letter: ACWA1, Pg22, P3	COMMENT	Excerpt: 156	Type: wetlands
As an initial matter, this potentially conflicts with State’s no net loss of wetlands policy (E.O. W-59-93).			
Response: Please see Response to Comment ACWA-32.			
Letter: ACWA1, Pg22, P3	NOT COMMENT	Excerpt: 157	Type: wetlands
Wetland projects are a cost-effective manner to improve water quality by removing contaminants, including sediments to which mercury binds, before entering receiving waters, and they play an important role in the implementation of TMDLs. Wetlands provide an environmentally sound way to address the pollution caused by urban runoff before the runoff reaches sensitive receiving waters. Wetlands provide a cost effective alternative that can be used to address runoff from existing communities that can’t easily be retrofitted.			
Response: Comment noted. Sections 4.4.7 and 6.10.1 of the Staff Report acknowledges that wetlands are a valuable resource. Section 6.10.2 of the Staff report recognizes that wetlands may increase mercury methylation. Section IV.D.7 of the Provisions merely points out the fact that Permitting Authorities can regulate wetland projects in a manner intended to reduce mercury methylation.			
Letter: ACWA1, Pg22, P4	COMMENT	Excerpt: 158	Type: language/wetlands
The challenge for wetlands is that this understanding is not translated into the Provisions regulatory language. The regulatory language, which is what will ultimately survive this rulemaking and drive water boards’ future actions, does not reflect the State Water Board’s position with regard to the scientific uncertainty of the process of methylation and wetlands.			
Response: The Provisions acknowledge that existing regulatory authority is sufficient to address mercury in wetlands and that no additional regulatory authority is necessary. The provisions provide the Water Boards direction to consider “consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS, when adopting, re-issuing, or modifying water quality certifications, WDRs, or waivers of WDRs”.			

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Section 4.4.7 and Appendix Q of the Staff Report summarize current scientific understanding of the role of wetlands in mercury methylation and transport. The Provisions would not be an appropriate place to speculate on possible future scientific advancement. The Provisions do not change the Water Boards' existing regulatory authority regarding wetlands.			
Letter: ACWA1, Pg22, P4	COMMENT	Excerpt: 159	Type: wetlands/language
Absent revisions, the text implies (a) the listed measures are necessary and appropriate to incorporate into permit conditions for wetlands development [which they are not]; and (b) the listed measures will achieve mercury reductions from wetlands projects [which they may not] – leaving a cloud of regulatory uncertainty over future wetlands projects.			
Response: Section IV.D.7 of the Provisions makes it clear that these measures are not required, or always necessary. The Permitting Authority may, at their discretion, require such measures and "...should consider requiring such measures in areas with elevated mercury concentrations..." The Provisions were drafted to suggest appropriate measures to incorporate into permit conditions at the discretion of the Permitting Authority.			
Management measures are not prescribed, but possible design feature and management measure considerations are provided. It is up to the discretion of the Permitting Authority to require specific design features and management measures to reduce the production of methylmercury in wetlands on a project-by-project basis.			
Letter: ACWA1, Pg22, P5	COMMENT	Excerpt: 160	Type: wetlands/language
The Staff Report and regulatory language should be amended to reflect the current knowledge of the effectiveness of control measures as it relates to wetlands and other bodies. We believe the regulatory language should clarify that the listed measures are not BMPs and may or may not be appropriate depending on site specific factors.			
Response: Please see Response to Comment ACWA1-159.			
Letter: ACWA1, Pg22, P5	COMMENT	Excerpt: 161	Type: Wetlands
Alternatively, the listed management measures could be eliminated altogether from the regulatory text at section IV.D.7 [Wetland Projects]. Such amendments would ensure that the Provisions are consistent with the stated intent of the State Water Board, which is not to prevent new wetland projects because of mercury concerns. Otherwise, a cloud of regulation on wetland creation/restoration will have the regulated community looking for alternatives to wetland creation, often to the detriment of water quality and other environmental outcomes.			
Response: Please see Response to Comment ACWA1-32.			
Letter: ACWA1, Pg23, P1	COMMENT	Excerpt: 162	Type: water code compliance
3. Further Analysis of Stormwater and Wetlands Mercury Control Measures is required under the Water Code and CEQA.			
Failure to identify and properly analyze mercury stormwater controls and wetlands implementation measures is a violation of Water Code sections 13241(c) and 13242(a). Delete the limitations or properly identify and analyze such controls consistent with the requirements of the Water Code.			
Please see Response to Comment ACWA1-146.			

Letter: ACWA1, Pg23, P2	COMMENT	Excerpt: 163	Type: stormwater/CEQA
Failure to identify and assess environmental impacts of stormwater controls and wetlands implementation measures is a CEQA violation. Delete the limitations or properly identify and analyze such controls.			
Response: Please see Response to Comment ACWA1-146.			
Letter: ACWA1, Pg23, P3	COMMENT	Excerpt: 164	Type: BUs
F. New Beneficial Uses. 1. The New Beneficial Uses Will Likely Result in Further Water Quality Regulations for Pollutants Other than Mercury.			
As recognized in the Workshops and at the Board Hearing, the new beneficial use categories of T-SUB, SUB, and CUL will pave the way for listing, WQOs, ELs, and TMDLs for other constituents. See, Beneficial Use handout, p. 5 (stating that the subsistence beneficial uses may require regulation of other bioaccumulatives). Wastewater and industrial facility upgrades may be needed to comply with multiple future statewide or region wide WQOs for other pollutants regulated in association with new beneficial use categories (facility upgrades likely to involve adding nitrification and denitrification steps or adding additional filtration) (see p. 177).			
Response: Beneficial uses are the cornerstone of water quality protection. These uses may be designated and subsequent water quality objectives may be developed for pollutants other than mercury (please also see Appendix T, question 16). Any designation and associated water quality objective, EL, or TMDL will be subject to a public participation process. Also, Please see Response to Comment WSPA2-13.			
Letter: ACWA1, Pg23, P4	COMMENT	Excerpt: 165	Type: BUs/Flow
2. The Staff Report and the Regulatory Text Should Include Direction Regarding the Adoption of Flow and Fish Population Objectives.			
It is likely that without specific direction in the Staff Report and the Provisions the new CUL beneficial use will result in flow and fish quantity objectives. See, Workshop Beneficial Use handout, p. 2, (stating that the State Board may develop a flow objective to protect the new CUL beneficial use, although “it is not anticipated.”)			
Response: Comment noted. Please see Appendix T question 1.			
Letter: ACWA1, Pg23, P5	COMMENT	Excerpt: 166	Type: BUs
For example, in 2011 the Oregon Department of Environmental Quality adopted the strictest standard for toxic water pollution in the United States to protect tribal members and others who eat large amounts of contaminated fish. The human health water quality criteria have been adopted for 113 pollutants, including mercury, flame retardants, PCBs, dioxins, plasticizers and pesticides. However, the new rule could end up costing millions and improvements in water quality are expected to take years, if not decades; yet it's not clear how much the rules will actually reduce pollution.			
Response: Comment noted. At such time a beneficial use designation is being considered, we recommend the commenter raise these issues to Regional Board considering designation during the public participation process.			

Letter: ACWA1, Pg23, P6	NOT COMMENT	Excerpt: 167	Type: BUs/Flow
<p>Similarly, the State of Washington was thereby restricted from developing and operating infrastructure that would hinder fish passage and thereby diminish the number of fish that would otherwise be available for Tribal harvest. <i>United States v. Washington</i>, 20 F. Supp. 3d 986, 1000, 1022 (W.D. Wash. 2013). A Florida tribe challenged the State of Florida’s implementation of new water quality criteria for 39 chemical components not currently regulated by the state and revisions to standards for 43 more were for failing to account for the higher levels of fish consumption by tribe members who subsist on fish and doesn't include sufficient protections for tribe members who subsist on fish and other seafood. <i>Seminole Tribe of Florida v. Dep’t of Env’tl Protection</i>, No. 2D16-4305.</p>			
Response: Comment noted.			
Letter: ACWA1, Pg24, P1	COMMENT	Excerpt: 168	Type: water code compliance
<p>3. The Staff Report Does Not Properly Document Consideration of Water Code Section 13241 in the Adoption of the New Beneficial Uses.</p> <p>Contrary to CWC § 13241 the Staff Report fails to consider the relevant factors in establishing the new B/U categories by failing to consider information about background conditions in specific water bodies or regionally, by failing to identify water quality conditions that can reasonably be achieved through the coordinated control of factors that affect water quality, and by failing to properly consider the full scope of economic impacts associated with treatment plan upgrades and associated mitigation measures.</p>			
Response: Please see Responses to Comments ACWA1-15, 16, and 67. In addition, CWC § 13241 is specific to setting water quality objectives. In establishing new beneficial use definitions, the State Water Board is not subject to the requirements of CWC § 13241.			
Letter: ACWA1, Pg24, P2	NOT COMMENT	Excerpt: 169	Type: BUs/ policy guidance
<p>4. The Staff Report Should Include Policy Guidance and Criteria in the Designation of Beneficial Uses to Avoid Unintended Consequences.</p> <p>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, we recommend the State Water Board include guidance for the Regional Boards in the Staff Report as follows:</p>			
Response: Please see Response to Comment WSPA2-8.			
Letter: ACWA1, Pg24, P2	COMMENT	Excerpt: 170	Type: BUs/ policy guidance
<p>1. State that with respect to the tribal (T-SUB, CUL) and subsistence (SUB) beneficial uses and WQOs flow and fish quantity criteria/objectives shall not be established.</p> <p>2. Prohibit the designation of tribal (T-SUB, CUL) and subsistence (SUB) beneficial uses where the use is wholly in the past (<i>i.e.</i>, not existing and not probable future use). <i>See</i>, Staff Report at Appendix T-4 (stating that regional water boards do not designate waters with beneficial uses that occurred solely in the past).</p>			

Responses to Comments—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 Mercury Provisions.

3. Prohibit the designation of tribal (T-SUB, CUL) and subsistence (SUB) beneficial uses where the water quality does not support the use.			
Response: Please see Response to Comment WSPA2-8. Regarding number 1, please see Appendix T, Question 1. Regarding numbers 2 and 3, the designation of water bodies will be part of a public process conducted by the Regional Water Board, therefore prohibiting designations is not being recommended.			
Letter: ACWA1, Pg24, P3	COMMENT	Excerpt: 171	Type: BUs/ UAA
For already designated beneficial uses that will immediately trigger the Mercury Provisions, e.g., COMM and RARE, we strongly recommend conducting a UAA to determine whether the use is attainable. <i>See, Cal. Ass'n of Sanitation Agencies v. State Water Res. Control Bd.</i> (2012) 208 Cal.App.4th 1438, 1460 (finding that where a water board has evidence that a designated use does not exist and likely cannot be feasibly attained it is unreasonable to require dischargers to incur control costs to protect that use). Alternatively, regional boards could conduct a UAA prior to imposing ELs in NPDES permits.			
Response: Please see Responses to Comments WSPA -7, CVCWA1-7, and 37.			
Letter: ACWA1, Pg24, P4	COMMENT	Excerpt: 172	Type: Unfunded Mandate
G. Adoption of the Mercury Provisions is an Unfunded Mandate.			
Section 6 of Article XIII B of the California Constitution provides, in relevant part: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or higher level of service.” Where a subvention is not provided, the new program – or in this case, regulation – is an unfunded mandate.			
Response: Please see Response to Comment ACWA1-173.			
Letter: ACWA1, Pg25, P1	COMMENT	Excerpt: 173	Type: Unfunded Mandate
The Mercury Provisions are an unfunded mandate because they mandate a higher level of protection (more stringent WQOs) than required under federal law.			
Response: First, any argument that the Provisions contain requirements that are an “unfunded state mandate” is premature until the issuance of the permits.			
Second, the Provisions’ implementation requirements on NPDES permittees are not a state, reimbursable mandate because they are required under the broad, federal mandate of the Clean Water Act NPDES program. With respect to any requirements imposed on individual, non-storm water permittees, pursuant to application of the revisions to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries in California (commonly referred to as the SIP), the Clean Water Act and its implementing regulations require NPDES permittees to demonstrate their discharge will not cause or contribute to a violation of water quality standards. If there is “reasonable potential,” the Water Boards are obligated under the Clean Water Act to develop water quality based effluent limitations to ensure attainment of water quality standards. (40 CFR § 122.44(d).)			

<p>Although federal law does not expressly require the precise treatment controls that would be required of the MS4 permittees, upon incorporation into permits, the Provisions would come within the mandate of Clean Water Act section 401(p)(3)(B)(iii) that permits contain controls to reduce pollutants to the “maximum extent practicable” and “such other provisions as the [State Water Board] determines appropriate.” The requirements contained in the Provisions do not exceed the obligations required under federal law.</p> <p>Finally, reimbursement is not required where a local agency permittee has authority to levy charges, fees, or assessments sufficient to pay for such a program, including charges, fees, or assessments that require voter approval pursuant to Proposition 218 or Proposition.</p>			
Letter: ACWA1, Pg25, P2	NOT COMMENT	Excerpt: 174	Type: Summary
<p>First, the proposed Sport Fish WQO of 0.2 mg/kg, which applies to COMM and is protective of human health, is slightly lower the federal Fish Contaminant Goal of 0.22 mg/kg developed by OEHHA (Klasing and Brodberg 2008). While the federal OEHHA value is not enforceable, it is the contaminant goal for mercury in fish, concentrations above which the federal agency has determined warrant advisories to those consuming the fish. Further, the 0.22 mg/kg value has been used by the State since 2012 for water quality assessment purposes in the state, according to the Staff Report (p. 31).</p>			
<p>Response: Please see Response to Comment ACWA1-173.</p>			
Letter: ACWA1, Pg25, P3	NOT COMMENT	Excerpt: 175	Type: background/history
<p>Second, the proposed Sport Fish WQO of 0.2 mg/kg is also more stringent than the federal EPA national water quality criterion and the USEPA federal regulatory objective for fish tissue of 0.3 mg/kg. The USEPA fish tissue criterion has been used to fulfill the narrative toxicity objective in regards to mercury (<i>id.</i>).</p>			
<p>Response: Please see Response to Comment ACWA1-173.</p>			
Letter: ACWA1, Pg25, P4	NOT COMMENT	Excerpt: 176	Type: Description of Reg
<p>Third, the proposed Sport Fish WQO of 0.2 mg/kg is also more stringent than the fish tissue concentration for mercury of 0.37 mg/kg used to derive the currently applicable federal USEPA CTR water criterion for protection of human health (<i>id.</i>).</p>			
<p>Response: Please see Response to Comment ACWA1-173.</p>			
Letter: ACWA1, Pg25, P5	COMMENT	Excerpt: 177	Type: Unfunded Mandate
<p>All told, even the least protective human health mercury WQO of 0.2 mg/kg – which would apply immediately upon adoption and approval of the proposed Provisions – provides a higher level of protection as compared to all applicable federal limits, therefore constituting an unfunded State mandate.</p>			
<p>Response: The Water Quality Objectives were developed in accordance with the updated 2001 U.S. EPA Clean Water Act section 304(a) criteria which recommends adjusting the consumption level to account for local consumption. The staff report adequately describes the modification of the default consumption rate using California data in Chapter 6.2. The resulting objectives are not more stringent than U.S. EPA recommended criteria.</p>			

Also, Please see Response to Comment ACWA1-173.			
Letter: ACWA1, Pg25, P6	COMMENT	Excerpt: 178	Type: BUs
In addition, the wildlife beneficial uses (Sport Fish (except COMM, CUL), Prey Fish, CLT Prey Fish) are not supported under federal law if the use is not an existing or probable future use or water quality does not support the use because the federal act authorizes designation of only existing or probable future beneficial uses.			
Response: The Provisions do not designate waters with wildlife beneficial uses. Those designations are generally done by the Regional Boards. As stated in III.D.1. of the Provisions, “The water quality objectives that protect wildlife that consume fish apply to waters with WILD, MAR, RARE, WARM, COLD, EST, and SAL beneficial uses.” These beneficial uses have already been designated to many individual water bodies by the Regional Boards throughout California. These Provisions will apply where these designations have been made and to water bodies that are designated with these beneficial uses in the future. In designating water bodies with beneficial uses, Regional Boards follow both state and federal requirements. In addition, the currently designations have been approved by U.S. EPA and are therefore included as a component of the federal water quality standard.			
Letter: ACWA1, Pg25, P6	COMMENT	Excerpt: 179	Type: BUs
Where WQOs are already exceeded, it is highly likely that wildlife uses have not been occurring since 1975 given the legacy nature of mercury pollution. Thus, where a designation is based on a wholly past use, and therefore protected under Porter Cologne, but not the federal act it is an unfunded State mandate.			
Response: Just because the Water Quality Objectives are being exceeded today does not mean that the beneficial use does not exist. For example, in some water bodies that are listed as impaired for mercury wildlife still exist in that same water body and consume fish from the waters. The beneficial use still exists for that water body, but the use is being impaired because mercury in the fish is having a detrimental effect on the wildlife. This effect can be in several areas, such as reduced reproduction, changes in behavior, or reduced survivability. The assumption that any impairment means that the use no longer exists or cannot exist in the future and therefore the water body must be de-designated from that use is incorrect. In addition, even if there is a water body that is so toxic from mercury pollution that it can no longer sustain a wildlife habitat beneficial use the Regional Water Board may still include the wildlife habitat beneficial use as a goal use.			
Letter: ACWA1, Pg25, P7	COMMENT	Excerpt: 180	Type: CEQA
H. CEQA Comments. 1. Failure to Include the Reservoir Program in the Project Description is Piecemealing.			
The Staff Report provides, “Many methods of compliance for the Provisions could be similar to those required for the Reservoir Program, including sediment controls, possible wastewater treatment plant upgrades, and mercury monitoring . . . Reservoir Management Actions [i.e., methods to manage mercury in reservoirs] are different methods of compliance not required by the Provisions, but some of the impacts could be similar as the impacts of the Provisions.” (p. 255) This rulemaking’s WQOs will be used to determine which waters are impaired and will therefore drive the Reservoir Program – for water districts with multiple discharges and operations that will be regulated for mercury, it is			

important to understand how the Reservoir Program, which is under development, will work in conjunction with the Provisions as a comprehensive statewide mercury program.

Response: The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) identifies similarities between the proposed rulemaking project and the Reservoir Program (or other programs) in order to facilitate coordination of the programs, which are otherwise separate and distinct programs and projects as designated (see Staff Report, Section 1.6, “Relationship to the Statewide Mercury Control Program for Reservoirs”). The relationship between the project and the Reservoir Program (and other programs) is further described in the cumulative impacts analysis and discussion included in Chapter 8.7, and Appendix E provides a description of related government mercury programs. In addition, as described in Chapters 7 and 8 of the Staff report:

- The State Water Board’s Reservoir Program is intended in part to establish a program to implement the Provisions’ water quality objectives for Commercial and Sport Fishing (COMM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE) in all California reservoirs impaired by mercury for those uses. The Reservoir Program recognizes the inherent differences in the characteristics of reservoirs and (for example) streams or rivers as hydrologic units, and has objectives limited by the intended application to reservoirs as opposed to other hydrologic units.
- The proposed rulemaking, “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 MERCURY PROVISIONS”, is intended to establish water quality objectives for mercury in any inland waters, and also recognizes that water quality objectives for reservoirs may require case-by-case evaluation (see Staff Report, Section 7.2.10) because of the differences in reservoirs as hydrographic units. Further, the proposed rulemaking provisions have much broader application and objectives, and are designed to have independent utility, whether or not the Reservoir Program is ultimately adopted by the State Water Board. If the State Water Board does not adopt a Reservoir Program, the rulemaking Provisions will stand-alone and be implemented on a case-by-case basis for discharges to reservoirs, as described in Section 6.13.3 of the Staff Report.

ACWA1	NOT COMMENT	Excerpt: 181	Type: Description of Reg
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2. The Project Objectives are Improperly Narrow and Violate CEQA.
 CEQA Guidelines § 15124(b) requires a clearly written statement of objectives, including the underlying purpose of the project, which will help the lead agency to develop a reasonable range of alternatives and aid decision makers in preparing findings or a statement of overriding considerations. The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency. “A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings . . . The statement of objectives should include the underlying purpose of the project.” Cal. Code Regs., tit. 14, § 15124, subd. (b).

Response: The State Water Board’s water quality planning actions has been certified as an exempt regulatory program in accordance with subdivision (c) of the Public Resources Code section 21080.5. (Cal. Code Regs., tit. 23, § 3775.) California Code of Regulations, title 23, section

3777 provides that the SED shall include a brief project description. This qualified CEQA exemption provides that Water Boards need not prepare a negative declaration, mitigated negative declaration or EIR for these projects and instead prepares substitute environmental documentation (SED) in accordance with the procedures in the State Water Board’s regulations.

Section 2.2 of Staff Report provides a statement of project objectives, including the underlying purpose of those objectives. The policy objective *and* the purpose of Objective 1 is to “recognize beneficial uses of water made by California Native Americans and subsistence fishers, including fishing, cultural, and ceremonial uses of water”. The policy objective of Objective 2 is to “adopt numeric water quality objectives for mercury...” with the stated purpose “to protect piscivorous wildlife from consumption of fish with elevated levels of mercury”. The policy objective of Objective 3 is to “adopt water quality objective(s) for mercury...” with the stated purpose “to protect recreational fishers, subsistence fishers, and California tribes from consumption of fish with elevated levels of mercury.” The policy objective of Objective 4 is to “provide a program of implementation...” with the stated purpose “to control mercury discharges and achieve the Mercury Water Quality Objectives in California waters”. The policy objective *and* the purpose of Objective 5 are to “provide statewide consistency for objectives 1 through 4”. The objectives are clear and concise in order to generate a reasonable range of alternatives to evaluate in the Staff Report, and to generate the necessary findings and/or concerns. (Cal. Code Regs, tit. 23, § 3777(b)(3).) CEQA guidelines emphasize that project descriptions should not supply extensive detail beyond that needed for evaluation and review of the environmental impact (Cal. Code Regs., tit. 14, § 15124).

Letter: ACWA1, Pg26, P2	COMMENT	Excerpt: 182	Type: CEQA
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However, the Mercury Provisions project objectives are simply listed in the Staff Report and not discussed or explained. CEQA and the State Water Board’s implementing regulations require an analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts. Cal. Code Regs., tit. 23, § 3777. Failure to include a meaningful discussion of project objectives undercuts CEQA’s requirement to analyze reasonable alternatives.

Response: The Provisions’ project objectives were formed based on information contained in the Introduction (Chapter 1) of the Staff Report, including but not limited to the risk that mercury and methylmercury pose to humans and wildlife, the importance of variation in beneficial uses when considering potential for mercury ingestion, the regulatory role and authorities of the State Water Board, and the consent decree requirement for the State Water Board (or U.S. EPA) to have a mercury policy in place by June 30, 2017 (see Section 1.2). Chapter 6 of the Staff Report analyzes the project options and identify and explain the issues under consideration to meet the project objectives. CEQA requires an analysis of reasonable alternatives to the project and mitigation measures. (Cal. Code Regs., tit. 23, § 3777 and tit. 14, § 15124, subd. (b)). CEQA does not require an extended analysis of project objectives or alternatives to project objectives. (Cal. Code Regs., tit. 14, § 15124, subd. (b)).

Chapters 8 and 9 of the Staff Report contain a detailed analysis of reasonable alternatives and mitigation measures.

Letter: ACWA1, Pg26, P3	COMMENT	Excerpt: 183	Type: CEQA, alternatives
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The SED improperly eliminates alternatives for failing to meet one of a list of five project objectives, where the project objectives are not discussed or explained and no project purpose is identified in the project description (CEQA Guidelines 15126.6(b) [An EIR should not exclude an alternative from detailed consideration merely because it “would impede to some degree the attainment of the project objectives.”] Although a

lead agency may not give a project's purpose an artificially narrow definition, a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal. <i>In re Bay-Delta etc.</i> , (2008) 43 Cal. 4th 1143, 1165-66.			
Response: Please see Responses to Comments ACWA1-181, and 182.			
The Staff Report is required to describe a range of reasonable alternatives to the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. The Staff Report is not required to consider every conceivable alternative to a project. (Cal. Code Regs., tit. 14, § 15126.6, subd. (a)). Factors that may be used to eliminate alternatives from detailed consideration in the Staff Report include failure to meet most of the basic project objectives. (Cal. Code Regs., tit. 14, § 15126.6, subd. (c)). Chapters 8 and 9 of the Staff Report contain a detailed analysis of reasonable alternatives and mitigation measures. Alternatives are not improperly eliminated because they are eliminated due to failing to meet the most basic project objectives.			
Letter: ACWA1, Pg26, P4	COMMENT	Excerpt: 184	Type: CEQA, alternatives
However, the Staff Report's project description does not identify a project purpose. For this reason, eliminating alternatives for failing to meet one of five project objectives – particularly where the Staff Report only lists and does not discuss the rationale behind the project objectives – does not comply with the requirement to consider a reasonable range of alternatives.			
Response: Please see Responses to Comments ACWA1-181, 182, and 183.			
Letter: ACWA1, Pg27, P1	NOT COMMENT	Excerpt: 185	Type: Drinking Water Discharges
4. Environmental Impacts Are Not Properly Considered or Analyzed in the Staff Report.			
<i>a) Treatment Facility Upgrades Required to Comply with Effluent Limitations Will Effect Water Supply.</i>			
As a result of planned activities and emergencies, water purveyors have discharges from their drinking water systems, such as line testing. Planned discharges may be scheduled or unscheduled and are due to development and maintenance activities mandated by statutory requirements under the federal Safe Drinking Water Act and the California Safe Drinking Water Act (Health and Saf. Code, division 104, part 12, chapter 4.) Emergency discharges are due to facility failures, and catastrophic events.			
Response: Comment noted. Also, Please see Response to Comment ACWA1-186, below.			
Letter: ACWA1, Pg27, P2	COMMENT	186	Type: drinking water discharges
Drinking water system discharges under the scope of the proposed Mercury Provisions ELs for individual non-stormwater NPDES permits			

would include both planned and emergency discharges. As discussed above and in Section 2 of the attached Technical Report, added costs to upgrade treatment technologies to meet new ELs as low as 1 ng/L, the lack of treatment technologies to reduce discharges to meet ELs, new listings and associated TMDLs, and the lack of realistic time schedules to comply with the new mercury program pose a significant risk of increased compliance costs, permit violations and penalties, and citizen suit enforcement and attorneys’ fees – all of which will increase the cost of water service.

Response: The 1 ng/L water quality objective is not recommended for waters with drinking water supply beneficial use (MUN). As stated in Staff Report section 3.11 on page 40 that *“All basin plans incorporate the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations to protect MUN beneficial use (Cal. Code Regs., tit. 22, § 64431). The MCL for mercury is 0.002 mg/L [or 2 ng/L]. The Mercury Water Quality Objectives would be protective of this beneficial use, but the objectives are much more stringent than necessary to protect this use. Therefore, the Mercury Water Quality Objectives are not recommended to replace objectives for the MUN beneficial use.”* Thus, the water purveyors are already subject to the 2 ng/L water quality objective and have been for many years.

For the 1 ng/L water quality objective, it only applies to slow moving water bodies with T-SUB beneficial use. In addition, the Staff Report in section 6.6 on what mercury objective should be adopted to protect the T-SUB beneficial use, the Staff Report does not recommend use water quality objective of 1 ng/L for protecting the T-SUB beneficial use.

Finally, drinking water discharges are subject to General Order No. CAG140001 STATEWIDE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR DRINKING WATER SYSTEM DISCHARGES TO WATERS OF THE UNITED STATES and not subject to these provisions.

Letter: ACWA1, Pg27, P2	COMMENT	Excerpt: 187	Type: Drinking Water/ Economics
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While the exemption for small disadvantaged communities will provide some protection, increased cost of service must be passed on to ratepayers or be paid for by eliminating other programs – both of which would adversely affect water purveyors’ ability to provide clean, safe and affordable drinking water to their customers.

Response: Please see Response to Comment ACWA1-186 above.

Letter: ACWA1, Pg27, P3	COMMENT	Excerpt: 188	Type: Energy /emissions
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b) Treatment Facility Upgrades Such as Reverse Osmosis, Necessary to Meet 1 ng/L May Result in Significant Energy Use and Air and GHG Emissions.

As documented in Section 2 of the Technical Report, wastewater treatment facilities with tertiary treatment may need to introduce advanced treatment to meet the proposed 1 ng/L EL for slow-moving waterbodies designated T-SUB.

Response: Please see Responses to Comments WPA2-24, and WSPA2-46.

Letter: ACWA1, Pg27, P3	COMMENT	Excerpt: 189	Type: Energy/emissions
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The Staff Report does not offer examples of such treatment options to comply with the 1 ng/L standard; however, the Technical Report indicates that RO could be used. Operation costs for this treatment would require up to twice as much power consumption as tertiary treatment alone.

Responses to Comments—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 Mercury Provisions.

Air quality and climate change effects associated with the concomitant air and greenhouse gas emissions must be evaluated in the Staff Report so that the public and decision makers may understand the scope of potential environmental impacts associated with adoption of the Mercury Provisions.			
Response: Please see Responses to Comments WPA2-24, and WSPA2-46.			
Letter: ACWA1, Pg28, P1	COMMENT	Excerpt: 190	Type: sediment controls
c) <i>Sediment Controls to Reduce Mercury May Result in Hydromodification Impacts</i>			
The Provisions recommend water boards impose sediment controls at mine sites and for nonpoint sources in areas of elevated mercury (pp. 171-172). Sediment controls are designed to keep or reduce the amount of sediment from entering into waterbodies. The reduction of sediment in natural stream channels can create “hungry water,” resulting in erosion and downcutting of the natural streambed. <i>See, e.g., Hydromodification Management Plan: County of San Diego § 6.4.7</i> (Brown and Caldwell 2011). The Staff Report does not address this potential for hydromodification effects resulting from implementation of sediment control measures as imposed by regional boards.			
Response: The referenced document, <i>Hydromodification Management Plan: County of San Diego § 6.4.7</i> (Brown and Caldwell 2011) says, “The “hungry water” phenomenon occurs when the natural sediment load decreases...” Sediment from mine sites are not considered natural sediments as well as sediments from many non-point sources such as agricultural fields or any other humanly modified landscapes.			
Letter: ACWA1, Pg28, P2	NOT COMMENT	Excerpt: 191	Type: Greet/Ending
II. CONCLUSION.			
The water agencies appreciate this opportunity to provide comments on the proposed beneficial uses and Mercury Provisions. We support protection of public health, and our comments are focused primarily on concerns with the Non-Tribal/Non-Subsistence provisions. We would very much appreciate the opportunity and time to work with you and your staff to address those concerns.			
Response: Comment noted.			
Letter: ACWA1, Pg30, P1	NOT COMMENT	Excerpt: 192	Type: Greet/Ending
This technical memorandum summarizes Exponent’s comments on the State Water Resources Control Board’s (SWRCB’s) proposed “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 Mercury Provisions” (Mercury Provisions), which was released for public review on January 3, 2017.			
Response: Comment noted.			
Letter: ACWA1, Pg30, P1	COMMENT	Excerpt: 193	Type: general
Our comments focus on concerns that the proposal will not produce reductions in mercury concentrations in fish because it fails to address the primary sources of mercury to the State’s water bodies and fish. The proposal also contains a number of technical shortcomings that should be addressed before adoption. Our comments fall into seven primary categories, summarized as follows:			
Response: Please see Response to Comments WAPA2-79 and 83.			

Letter: ACWA1, Pg30, P1	COMMENT	Excerpt: 194	Type: Effluent Limits
1. Point source discharges subject to individual National Pollutant Discharge Elimination System (NPDES) permits (e.g., water treatment plants, wastewater treatment plants, and industrial discharges) are small relative to other mercury sources. Imposing stringent numeric effluent limitations on those sources will have little effect on mercury concentrations in fish and the environment. Stringent numeric effluent limits are inappropriate for most point sources, and alternative implementation mechanisms should be explored and developed by the SWRCB.			
Response: The Staff Report recognized that point sources such as POTWs are generally relatively minor sources of mercury to the environment compared to other sources. However, the Staff Report, Section 6.12.2, page 143 also points out that there is a wide range of mercury removal efficiency. There is no certainty that the mercury discharged from every discharge is insignificant, it would be appropriate to evaluate and determine the significance of mercury discharges from all NPDES sources and the use of water column values translated from a peer reviewed BAF is an adequate approach. It is important to ensure receiving waters attain water quality objectives. Therefore, it is appropriate to control possible point sources including NPDES Permittees.			
In addition see response to WSPA2-54 and 61			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 195	Type: Effluent Limits
2. The proposed effluent limitations for non-stormwater individual NPDES dischargers may be unattainable (especially 1 ng/L), and treatment upgrades to meet the proposed limits will be more costly than disclosed by the SWRCB.			
Response: Please see Responses to Comments ACWA1-105, 106 and 107.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 196	Type: implementation
3. The implementation program in the State's proposed policy should be modified to focus on actions that will lead to meaningful reductions in mercury in the state's waters and fish.			
Response: Please see Response to Comment WSPA2-79.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 197	Type: dilution credits/mixing zones
4. The Staff Report's position on dilution credits and mixing zones for NPDES discharges containing mercury is inconsistent with SWRCB precedential orders. The appropriateness of mixing zones and dilution credits should be evaluated on a site-specific basis.			
Response: Please see Response to ACWA1-139.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 198	Type: Objectives
5. The fish tissue objectives proposed to protect wildlife are likely to be overly conservative and should be revised to address this limitation.			
Response: Water Code § 13241 requires that water quality objectives be established to " <i>ensure the reasonable protection of beneficial uses and the prevention of nuisance</i> ". After considering various available studies, survey, etc., the proposed fish tissue objectives are necessary to reasonable protect the beneficial uses. Also, Please see Responses to Comments ACWA1-252, and 254.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 199	Type: Objectives

6. The water concentration targets derived from the proposed fish tissue water quality objectives are fundamentally flawed and should not be implemented at this time.			
Response: See Responses to Comments CVCWA1-11 and CVCWA1-12. Additionally, Appendix I of the Staff Report discusses the rationale for the calculation of the water column targets, including the use of BAFs and translators. In addition site specific water column translators may be developed to account for site specific conditions.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 200	Type: Objectives
7. The proposed human health objectives may be too conservative.			
Response: Please see Response to Comment ACWA1-251.			
Letter: ACWA1, Pg31, P1	COMMENT	Excerpt: 201	Type: Wetlands/Non-point sources
8. The proposed action to address dredging, wetlands, and nonpoint sources of mercury is vague and does not prescribe or prevent any specific actions.			
Response: The intent of The Provisions is to provide information to consider when Permitting Authorities are considering projects that create or restore wetlands, especially in areas with elevated mercury concentrations. The Provisions do not create strict prescriptive regulations on wetland development or restoration. Given this intent, The Provisions provide adequate direction.			
Section 6.10.1 of the Staff Report points to The Water Boards existing regulatory authority. The Provisions do not change the Water Boards' existing regulatory authority. Sections IV.D.5, IV.D.6, and IV.D.7 of The Provisions only affirm that The Water Boards have authority to regulate these activities under existing law.			
Letter: ACWA1, Pg31, P2	COMMENT	Excerpt: 202	Type: Effluent Limits
Details of these comments are included below.			
1. Point source discharges subject to individual NPDES permits (e.g., water treatment plants, wastewater treatment plants, and industrial discharges) are small relative to other mercury sources. Imposing stringent numeric effluent limitations on those sources will have little effect on mercury concentrations in fish and the environment. Stringent numeric effluent limits are inappropriate for most point sources, and alternative implementation mechanisms should be explored and developed by the SWRCB.			
Response: The program of implementation recognizes all sources of mercury and will result in reductions of mercury in fish tissue. Unlike a TMDL the program of implementation for a water quality standard does not have to focus on specific sources or develop duplicative programs where they already exist. Water Code section 13242 only requires " A description of the nature of actions which are necessary to achieve the objectives." The program of implementation addresses controls for controllable sources of mercury including non-point sources, mining, and storm water controls in addition to requirements for point sources. Should waters be exceeding the new water quality objectives a TMDL would be established that would take into account specific sources in a watershed. It is not possible to develop a detailed watershed specific implementation program for a statewide water quality objective. In addition, the Staff Report Chapter 4 discusses in detail the potential sources of mercury in the environment and Chapter 7 adequately describes the reasonably foreseeable methods of compliance. Where existing			

regulatory programs are in place, there is no requirement for these provisions to restate the existing regulatory authority.

It is important to recognize that the Provisions would not apply to many point sources that discharge to receiving waters for which mercury or methylmercury TMDLs for the beneficial use or water quality objective under evaluation have been established. In addition, the Provisions have incorporated much of what has been learned in the development of various mercury TMDLs. This body of knowledge has led, in part, to the selection of the consumption rate (from the S.F. Bay Consumption Study), the approach to dealing with non-point sources and wetlands to name a few. While point sources in the heavily impacted waters of the Sacramento Delta and San Francisco Bay have been found to be a minor source during the development of the applicable TMDLs, this likely will not hold true throughout the state, especially in areas not impacted by legacy mercury sources. The Provisions include a water column level of 12 ng/L for flowing waters and a 4 ng/L for slow moving waters. Since approximately ninety-three percent of discharges are to flowing waterbodies (See Table N-3a in Appendix N of the Staff Report), the majority of dischargers will need to meet the 12 ng/L as an effluent limit. Table N-6 in Appendix N shows that ninety three percent of dischargers were meeting an effluent limit of 12 ng/L from 2009 through 2015 and Table N-7 of Appendix N shows that seventy three percent of all dischargers were meeting an effluent limit of 4 ng/L from 2009 through 2015. Therefore, the vast majority of facilities will not need to upgrade to meet the effluent limits contained in the Provisions and the effluent limits in the Provisions are achievable with current technologies. However, to allow an alternative methods of implementation, the Provisions have been amended to describe where TMDLs may be appropriate to allow for additional flexibility. See response to WSPA2-54 and 61

Letter: ACWA1 , Pg 31 , P 3	NOT COMMENT	Excerpt: 203	Type: Description of Reg
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In Appendix N of the Mercury Provisions, SWRCB presents source analysis data for the 14 existing mercury-related TMDLs in the state; these TMDLs are listed in Table 1.2 Only three of the mercury TMDLs for these water bodies list wastewater and industrial discharges as sources of mercury.³ As reproduced in Figure 1, Table N-11 from Appendix N indicates that wastewater and industrial discharges constitute 4% of methylmercury discharged to the Delta and 1.5% of total mercury discharged to San Francisco Bay. (The third TMDL, for Calleguas Creek/Mugu Lagoon, lacks a quantitative source analysis.) Sources related to historical mining (tributaries and water body sediments) account for 93% and 82% of mercury in the Delta and San Francisco Bay, respectively, while atmospheric deposition (direct deposition and urban stormwater generated by mercury-laden precipitation) accounts for 15% of mercury in San Francisco Bay. Thus, data from these two TMDLs indicate wastewater and industrial NPDES dischargers contribute little mercury to affected water bodies relative to other sources, suggesting tight limitations on mercury from such dischargers will not result in significant reductions in environmental mercury concentrations.

Response: Comment noted. However, the San Francisco Bay is not representative of all waters in the State. The San Francisco Bay is the downstream receiving water from many legacy sources and is heavily impaired by mercury. This likely skews the data and in areas without legacy mercury loading point source loading may be more significant.

Letter: ACWA1 , Pg 33 , P 1	NOT COMMENT	Excerpt: 204	Type: Description of Reg
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Appendix N states:
From the [mercury TMDL source] estimates in Table N-11, atmospheric deposition is not a major source of mercury. In the Sacramento-San

<i>Joaquin Delta TMDL, municipal wastewater is more significant than atmospheric deposition. If this information is used to extrapolate relative source contribution to the state as a whole, then for any watershed without historic [sic] gold or mercury mining, wastewater and industrial dischargers can be a significant source of mercury.</i>			
Response: Comment noted.			
Letter: ACWA1, Pg34, P1	COMMENT	Excerpt: 205	Type: mercury source
However, a finding that atmospheric deposition is small does not lead directly to the conclusion that NPDES discharger contributions “can be a significant source of mercury”—instead, the Staff Report should consider the possibility that <i>neither</i> source might be significant.			
Response: Please see Response to Comment WSPA2-15.			
Letter: ACWA1, Pg34, P1	COMMENT	Excerpt: 206	Type: Mercury Source
Appendix N also suggests NPDES discharges can be significant in “any watershed without historic [sic] gold or mercury mining,” but this assertion is not supported by data or information in the Staff Report, and no evidence is provided to suggest extrapolating data from the Delta or San Francisco Bay to the entire state is appropriate.			
Response: Board staff reviewed studies on bioaccumulation factors for mercury to determine levels of mercury in water that would likely lead to an exceedance of the mercury water quality objectives. This information was from both national and California specific data. The bioaccumulation factors were peer reviewed by Dr. Marc W. Beutel, who concluded that the bioaccumulation factors are appropriate for California. The bioaccumulation factors are essential for calculating the appropriate effluent limits which are 12 ng/L for flowing waters and 4 ng/L for slow moving waters. Appendix N contains data on industrial and wastewater dischargers from 2009 through 20015. This data shows that some NPDES dischargers in California that discharge into flowing waters exceed 12 ng/L of mercury in their effluent. In addition, other NPDES dischargers that discharge into slow moving waters exceed 4 ng/L of mercury in their effluent. The combination of bioaccumulation factors and mercury effluent data suggest that there are several dischargers in California with levels of mercury in their effluent that may contribute to an exceedance of the mercury water quality objectives. While NPDES dischargers may only contribute a small amount of the total flow in some waters, other waters can be greatly impacted by these discharges. Many waters in California are effluent dominated for at least a portion of the year and the mercury in there effluent can be very significant to the waterbody where they discharge.			
Letter: ACWA1, Pg34, P2	COMMENT	Excerpt: 207	Type: Mercury Sources
In contrast to the proposal’s focus on NPDES discharges, the Staff Report indicates that historical mining, natural soils, and direct deposition are “significant” and “major” sources of mercury. ⁶ The Staff Report notes that “the median and average mercury concentrations in rain in California were 6 ng/L and 12 ng/L” and “the 99.8 th percentile of mercury concentrations in rain in the United States was 174 ng/L.” ^{7,8} Thus, a significant fraction of rain samples in California would have concentrations higher than these values, which, as discussed below, are equivalent to the proposed effluent limitations for point source discharges. The Staff Report also indicates that “[m]ercury deposition from atmospheric emissions is thought to be the major source of mercury in some Southern California lakes and reservoirs (U.S. EPA 2012, Tetra Tech 2008).”			
Response: Please See Response to Comment WSPA2-22. In addition, both the San Francisco TMDL and the Sacramento – San Joaquin Delta			

TMDL looked at both NPDES discharges and atmospheric deposition as sources of mercury. They found that NPDES dischargers are a greater contributor of mercury than atmospheric deposition (See Table N – 11 in Appendix N).			
Letter: ACWA1, Pg34, P3	COMMENT	Excerpt: 208	Type: Mercury Sources
<p>Finally, the Staff Report states, “[m]unicipal wastewater treatment plants are generally a relatively minor source of mercury to the environment compared to other sources. Wastewater treatment plants already remove most of the mercury from the effluent.”¹⁰ Because mercury sources attributable to NPDES dischargers are small compared to the dominant sources in the state, imposing stringent effluent limitations on NPDES dischargers such as those proposed in the Mercury Provisions will not result in a significant reduction in water body or fish concentrations. The Staff Report acknowledges this, noting that bioaccumulative pollutants, including mercury, are “generally very persistent in the environment,” concluding that:</p> <p><i>Even if all sources of the contaminants are eliminated, the contaminants are likely to remain high for decades, because either they do not degrade or they degrade very slowly. Much of the mercury in fish today is thought to be from historic mining in the late 19th century and early 20th century. Further, current sources may not be directly regulated by the water boards (e.g., atmospheric emissions, naturally occurring in soils, or geothermal sources).</i></p>			
Response: Please see Response to Comment ACWA1-92.			
Letter: ACWA1, Pg35, P2	COMMENT	Excerpt: 209	Type: mercury sources
<p>In summary, the Staff Report establishes clearly that sources other than NPDES discharges are the primary sources of mercury to the state’s water bodies and that imposing controls on NPDES discharges will have little or no effect on ambient mercury concentrations. This information should lead the SWRCB to develop a program to address those major sources.</p>			
Response: Please see Responses to Comments WAPA2 – 79 and 83.			
Letter: ACWA1, Pg35, P3	COMMENT	Excerpt: 210	Type: Effluent Limits
<p>2. The proposed effluent limitations for non-stormwater individual NPDES dischargers may be unattainable (especially 1 ng/L), and treatment upgrades to meet the proposed limits will be more costly than disclosed by the SWRCB.</p>			
<p>Response: The Provisions include an effluent limit of 12 ng/L for flowing waters and an effluent limit of 4 ng/L for slow moving waters. Since approximately ninety-three percent of discharges are to flowing waterbodies, (See Table N-3a in Appendix N of the Staff Report). The majority of dischargers will need to meet this effluent limit. Table N-6 in Appendix N shows that ninety three percent of dischargers were meeting an effluent limit of 12 ng/L from 2009 through 2015 and Table N-7 of Appendix N shows that seventy three percent of all dischargers were meeting an effluent limit of 4 ng/L from 2009 through 2015. Therefore, the vast majority of facilities will not need to upgrade to meet the effluent limits contained in the Provisions and the effluent limits in the Provisions are achievable with current technologies.</p> <p>With regards to the 1 ng/L effluent limitation, the staff report does point out in Chapter 7.2.9 that an effluent limit of 1 ng/L would likely only be met through major facility upgrades to most facilities. However, Table N-8 in Appendix N does show that twenty-seven percent of all facilities, including twenty five percent of POTWs are meeting an annual average of 1 ng/L, so not all facilities would need major upgrades to meet a 1ng/L effluent limit. Chapter 7.2.9 also points out that since neither the T-SUB nor SUB beneficial uses have been designated to any waters an effluent</p>			

limit would not be required by any dischargers upon adoption of the Provisions. Chapter 7.2.9 further points out that if the T-SUB or SUB beneficial uses are designated to any slow moving waters there are a variety of options other than meeting an effluent limit of 1 ng/L. The Water Boards may use compliance schedules, variances, site-specific objectives, or site-specific bioaccumulation factors, and dilution credits. Therefore, it is speculative to assume that facilities will be required to implement any new, yet undeveloped treatment technologies to comply with mercury effluent limits.

In addition, Please see Responses to Comments WSPA2-54, and 61.

Letter: ACWA1, Pg35, P3	NOT COMMENT	Excerpt: 211	Type: Effluent Limits
As discussed in Section 2 of the Staff Report, the proposed water quality objectives for mercury are expressed as fish tissue concentrations. These fish tissue concentrations are “translated” into water column concentrations proposed to be used to evaluate “reasonable potential” (RP) and to derive effluent limitations applicable to point source discharges. The water column concentrations and their proposed applicability to various water quality objectives (WQOs) and kinds of water bodies are summarized in Table 2. (Exponent’s evaluation of the translation procedures used to derive these water column concentrations is included in Section 6 of these comments.)			

Response: Comment noted.

Letter: ACWA1, Pg37, P1	COMMENT	Excerpt: 212	Type: Effluent Limits
The Staff Report asserts the proposed 12 ng/L effluent limitation “is achievable” with existing secondary treatment technology and (possibly) a mercury source control/minimization program. ¹² However, according to a recent study by HDR, typical mercury concentrations after secondary treatment range from 3.0 to 50 ng/L in Publicly Owned Treatment Works (POTWs) and from 10 to 50 ng/L in industrial discharges. ¹³ The report does not examine the factors responsible for the variability in mercury concentrations in treated effluent, though it likely depends in part on plant influent mercury concentrations. HDR’s data suggest some NPDES dischargers will <i>not</i> be able to meet the 12 ng/L effluent limitation with secondary treatment and/or a source control/minimization program.			

Response: Discharges into streams, rivers, and other fast moving water bodies would need to meet an effluent limit of 12 ng/L. Since the majority of facilities in California discharge into rivers or other fast moving waters, See Table N-3a in Appendix N of the Staff Report, and only approximately seven percent of the dischargers are to estuaries, sloughs, wetlands, tidal prisms, ponds, and marshes, which may be classified as slow moving waters and need to meet an effluent limit of less than 12 ng/L. Some of the facilities that discharge to flowing waters may need to meet an effluent limit of 4 ng/L if, in the future, are designated with the Tribal Subsistence Fishing (T-SUB) or Subsistence Fishing (SUB) beneficial uses. However, no water bodies have been designated with a T-SUB or SUB. Designation of these beneficial uses would require a Regional Water Board public process prior to taking action. The approximately seven percent of facilities that discharge into slow moving waters would need to meet an effluent limit of 4 ng/L. For individual non-storm water permits, the Staff Report has cited a study that the “*pollution prevention or source control are potentially effective in achieving sufficient reductions to enable POTWs to meet effluent limits that are 7.8 ng/L or lower.*” No waters would be required to meet an effluent limit of 1 ng/L upon adoption of the Provisions, since no waters are designated with T-SUB or SUB beneficial uses. If, in the future, slow moving waters are designated with either T-SUB or SUB beneficial uses, the permitting authority has a variety of options to set appropriate effluent limits. Options include site specific objectives, site specific bioaccumulation factors,

and dilution credits. The Provisions have also been modified to allow Regional Water Board the discretion to conduct a load assessment to assign appropriate effluent limits, even without a TMDL. The Permitting Authority may approve a compliance schedule or a variance to allow the facility to find cost effective methods to meet the effluent limit.			
Letter: ACWA1, 37 P2	COMMENT	Excerpt: 213	Type: Effluent Limits
The Staff Report also asserts the proposed 4 ng/L effluent limitation is achievable with tertiary treatment that includes nitrification/denitrification but not with secondary treatment. ¹⁴ Data from the Central Valley Regional Board indicate that tertiary treatment can reduce mercury concentrations to 4 ng/L or below in at least some cases but not in every case. On average, the San Jose/Santa Clara Waste Water Treatment Plant (WWTP) achieves a mercury concentration of 4 ng/L limitation using tertiary treatment, ¹⁵ while the Onondaga County WWTP does not. ¹⁶ Thus, it is likely some plants already employing tertiary treatment will not be able to meet the 4 ng/L water column concentration.			
Response: Table N-7 of Appendix N of Staff Report shows that seventy three percent of all dischargers were meeting an effluent limit of 4 ng/L from 2009 through 2015. Therefore, the vast majority of facilities will not need to upgrade to meet the effluent limits contained in the Provisions and the effluent limits in the Provisions are achievable with current technologies.			
Letter: ACWA1, Pg38, P1	COMMENT	Excerpt: 214	Type: Effluent Limits
In contrast with the 12 ng/L and 4 ng/L effluent limitations, the 1 ng/L effluent limitation proposed for slow-moving water bodies with a Tribal Subsistence Fishing designation is likely unachievable without extraordinary treatment upgrades and expenditures for most NPDES dischargers. The treatment processes that would be needed to meet a concentration limit of 1 ng/L are not disclosed in the Staff Report. The Staff Report indicates the 1 ng/L effluent limitation may be unachievable for NPDES dischargers not already achieving it (i.e., 73% of such dischargers according to Staff Report data). ¹⁷ The Staff Report suggests no treatment methods for NPDES dischargers to meet the 1 ng/L effluent limitation. Instead, the Staff Report states, “the Water Boards may use compliance schedules, site-specific objectives (with extended compliance schedules), TMDLs, or variances if the [1 ng/L] effluent limitation is unachievable.”			
Response: Please see Response to Comment ACWA1-210.			
Letter: ACWA1, Pg38, P2	COMMENT	Excerpt: 215	Type: Economics
HDR’s review of treatment technologies states, “[t]here is limited information available about achieving ultralow effluent mercury concentrations near the 5 ng/L range.” ¹⁹ The treatment process that appears most likely to meet the proposed 1 ng/L effluent limitation is advanced treatment employing microfiltration and reverse osmosis (MF/RO), and then under optimal conditions where input concentrations are low. ²⁰ Under these circumstances, HDR found dischargers could achieve mercury effluent concentration in the range of 1.2 to 3 ng/L. ²¹ However, this level of treatment exceeds tertiary treatment and requires substantial additional expenditures (see below), and the Staff Report does not disclose or examine the costs of this level of treatment.			
Response: Please see Responses to Comments WSPA2 -64, and WSPA2-65.			
Letter: ACWA1, Pg38, P3	COMMENT	Excerpt: 216	Type: Economics
Appendix R of the Staff Report estimates the cost of upgrades from secondary to tertiary treatment that would be required by the policy			

Responses to Comments—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 Mercury Provisions.

<p>to be in the range of \$9–15 million/year over 20 years. Exponent believes this range significantly underestimates upgrade costs. For example, Sacramento Regional San—a POTW with a design flow rate of 181 million gallons per day (mgd)—is currently upgrading from secondary to tertiary treatment at a capital cost of approximately \$2 billion and \$50 million/year in operation and maintenance (O&M) thereafter.²² These estimates for a single plant surpass the Appendix R total estimate for all plant upgrades in the state.</p>			
<p>Response: Please see Response to Comment WSPA2-63.</p>			
Letter: ACWA1, Pg39, P1	COMMENT	Excerpt: 217	Type: Economics
<p>Given advanced treatment (e.g., MF/RO) will be necessary to achieve the 1 ng/L limitation, costs will be far higher. HDR suggests that the capital cost of upgrading a plant from secondary to advanced treatment (MF/RO) would be about \$15–\$162 per gallon per day (gpd) of treatment capacity, depending on the size of the plant to be upgraded.²³ This range is 13–142 times higher than the Appendix R estimate of \$1.14 per gpd to upgrade to tertiary treatment²⁴ and would cost \$1.5–\$16.2 <i>trillion</i> for a plant that treats 100 mgd. Clearly, the costs required to upgrade a treatment plant to advanced treatment will exceed the costs to upgrade to tertiary treatment, such that the costs of implementing the SWRCB’s proposal will be far greater than disclosed in the Staff Report.</p>			
<p>Response: Please see Response to Comment WSPA2- 64.</p>			
Letter: ACWA1, Pg39, P2	COMMENT	Excerpt: 218	Type: CEQA/Upgrades
<p>In addition to capital and O&M costs, upgrading POTW treatment to advanced treatment would increase power consumption. For POTW dischargers, HDR estimates advanced treatment would require 50–100% more power than tertiary treatment.²⁵ Increased power consumption produces increased greenhouse gas emissions. This impact is not considered in the Environmental Document associated with the Mercury Provisions, and no mitigation measures are offered for this potentially permanent, long-term additional source of greenhouse gases.</p>			
<p>Response: Page 220 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) explains that greenhouse gas levels are not expected to rise significantly since mitigation measures are available to reduce greenhouse gas emissions due to construction, operation, and maintenance activities. As further explained on Page 222 of the Staff Report, the incorporation of BMPs and compliance with any plans, amendments, or regulations adopted for the purpose of reducing greenhouse gas emissions, vehicle use or projects undertaken to comply with the Provisions should reduce the impact on the environment due to greenhouse gas emissions. Section 8.4.7 of the Staff Report provides a detailed evaluation of the environmental impacts and potential mitigation measures the Provisions may have on greenhouse gas emissions.</p>			
Letter: ACWA1, Pg39, P3	COMMENT	Excerpt: 219	Type: implementation
<p>3. The implementation program in the State’s proposed policy should be modified to focus on actions that will lead to meaningful reductions in mercury in the state’s waters and fish.</p>			
<p>Response: Please see Response to ACWA1-196.</p>			
Letter: ACWA1, Pg39, P4	COMMENT	Excerpt: 220	Type: Effluent Limits
<p>Issue L in the Staff Report addresses the question, “What procedure should be used to determine which municipal wastewater and industrial dischargers would need effluent limitations?”²⁷ Two options are considered: (1) use a mercury concentration in water; (2) use</p>			

<p>mercury concentrations in fish tissue. Both options would result in effluent limitations for discharges to most of the state’s water bodies, despite the fact that point source discharges are minor contributors to mercury in the state’s water bodies; as detailed throughout these comments, such effluent limitations are not likely to result in reductions in ambient mercury concentrations. Although the proposed Mercury Provisions include language stating that the permitting authority is authorized to exempt certain dischargers from some or all of the provisions of the policy if the discharge is found to be “insignificant [de minimis],”²⁸ it appears that this exemption would be highly limited and unavailable for most dischargers. For this reason, Exponent recommends that the flow charts for both options be modified to consider additional factors and implementation options before concluding that effluent limits are required. Only if the policy is modified to include alternative implementation options will the policy be likely to lead to meaningful reductions in mercury concentrations in the state’s waters and fish.</p>			
<p>Response: As stated in Section 6.12.1 of the Staff Report, “Federal regulations require water quality based effluent limitations for NPDES permittees with reasonable potential to cause or contribute to an excursion above any water quality objective (33 U.S.C § 1311(b); 40 C.F.R. § 122.44(d)).” Section 6.12.2 of the Staff Report states, “A process is needed to determine which wastewater and industrial discharges would have effluent limitations.” There are several disadvantages to using fish tissue data, which are discussed in Section 6.12.3 of the Staff Report. One difficulty discussed is the lack of procedures for using fish tissue data in the SIP. Procedures may be developed. However, depending on the procedures chosen, the process could be very complicated for permit writers and collecting sufficient fish tissue data could be very expensive for dischargers. The use of mercury concentrations in water is recommended because it is much less complicate and allows the use of procedures already in the SIP. The mercury Provisions includes specified reasonable potential steps to allow the Regional Board to determine reasonable potential based on the applicable mercury water column values. The Reasonable Potential analysis has to comply with the SIP. However, revisions have been made to the Provisions implementation chapter in the calculation of effluent limits to clarify the approach a Regional Board may take with respect to an existing or developing TMDL for mercury. Please see Responses to Comments WSPA2-54 and 61.</p>			
Letter: ACWA1, Pg40, P1	COMMENT	Excerpt: 221	Type: Effluent Limits
<p>As shown in Figure 2 and Figure 3, Exponent recommends the addition of decision points based on the relative importance of point sources to mercury loads in the water body, and the consideration of alternative implementation measures.</p>			
<p>Response: Please see Responses to Comments ACWA1-220 and 222.</p>			
Letter: ACWA1, Pg40, P1	COMMENT	Excerpt: 222	Type: Effluent Limits
<p>First, if point source discharges are not significant contributors to mercury in the water body, effluent limitations should not be required.</p>			
<p>Response: The classification of insignificant discharges applies to discharges determined to be of very low threat to water quality and not just concerning mercury but with regards to all pollutants. It is not a recognition that municipal discharges are insignificant to the overall mercury loading in any given water body. Effluent limitations in general are established to ensure discharge of pollutants, in this case mercury do not exceed an applicable water quality objective. An effluent limitation is not excluded if there are other sources in the waterbody that prevent it from meeting water quality objectives or if a Discharger is not a significant contributor. However, revisions have been made to the Provisions implementation chapter in the calculation of effluent limits to clarify the approach a Regional Board may take with respect to an existing or developing TMDL for mercury.</p>			

Letter: ACWA1, Pg40, P1	COMMENT	Excerpt: 223	Type: Effluent Limits
The second query recognizes that effluent limitations on point sources may not be the most effective method for reducing mercury concentrations in receiving waters and fish, and indicates that alternative implementation measures (as discussed below) should be required in lieu of effluent limitations.			
Response: Please see Responses to Comments ACWA1-220, and 222.			
Letter: ACWA1, Pg40, P1	COMMENT	Excerpt: 224	Type: dilution credits/Comp Schedules/Variations
And finally, when effluent limitations are found to be necessary because point source discharges are an important source of mercury, the policy should require consideration of dilution credits, compliance schedules, and variances, particularly for effluent limitations that are infeasible to achieve, or that will require time and resources to implement.			
Response: For the suggestion regarding variances, see Response to Comment ACWA1 – 27. For the suggestion regarding dilution credits, Please see Response to Comment ACWA1-30. For the suggestion regarding compliance schedules, Please see Response to Comment WSPA2-13.			
Letter: ACWA1, Pg40, P2	COMMENT	Excerpt: 225	Type: BAFs
A second concern relates to the Staff Report’s recommendation that water column targets be used to determine reasonable potential and to calculate effluent limitations for point source discharges. As detailed in comment 6, the water column concentration targets calculated using nationwide average BAFs fail to consider the behavior of mercury, which is highly site-specific and complex. As a result, the recommendation to use water column targets calculated using BAFs as the basis for RP and effluent limitations is not scientifically appropriate. Exponent therefore recommends that a modified version of the second option, i.e., the use of mercury concentrations in fish tissue, be used to determine the need for effluent limitations, as shown in Figure 3.			
Response: Please see Response to Comment CVCWA1-11, and note that the Provisions has been modified to clarify the appropriateness of revising existing TMDLs . Also, Please see Responses to Comments WSPA2-54, and 61.			
Letter: ACWA1, Pg40, P3	COMMENT	Excerpt: 226	Type: Alternative Implementation Measures
Since, in most cases, the point source implementation measures that are the focus of the proposed Mercury Provisions are unlikely to appreciably reduce environmental mercury concentrations due to the dominance of non-point sources, alternative measures offer the best—and perhaps the only—chance to achieve meaningful reductions in mercury concentrations in the environment. Alternative measures should be investigated and discussed in public workshops prior to adoption of the proposed Provisions. Alternative implementation measures that should be considered include, but are not limited to the following:			
<ul style="list-style-type: none"> • A program for trading or offsets • A “water funds” approach to regional or watershed-based mercury control measures • Engaging other state agencies in efforts to control non-point sources (e.g., engaging the Air Resources Board in efforts to control atmospheric sources of mercury) • Programs to address non-point sources. 			

Response: Pleas see Response to Comment WSPA2-83.			
Letter: ACWA1, Pg43, P1	COMMENT	Excerpt: 227	Type: Hg sources
The most effective approaches to mercury control will be those that identify implementation actions for the primary sources of mercury. The implementation measures currently identified in the proposed Mercury Provisions do not effectively target these primary sources. The State’s proposed Mercury Provisions should be revised accordingly.			
Response: Please see Response to Comment WSPA2-83.			
Letter: ACWA1, Pg43, P2	COMMENT	Excerpt: 228	Type: dilution credits/mixing zone
4. The Staff Report’s position on dilution credits and mixing zones for NPDES discharges containing mercury is inconsistent with SWRCB precedential orders. The appropriateness of mixing zones and dilution credits should be evaluated on a site-specific basis.			
Response: Pleas see Response to Comment WSPA2-40.			
Letter: ACWA1, Pg43, P3	NOT COMMENT	Excerpt: 229	Type: dilution credits/mixing zone
<p>The Staff Report states in several places, “Water Boards have the discretion to allow dilution credits where appropriate.”(29) For example, in discussion of the difficulty of meeting the proposed 1 ng/L effluent limitation, the Staff Report states, “if the Water Board exercises its discretion to allow dilution credits, the objective would be much more achievable.” (30) The Staff Report also states <i>Dilution credits would be allowed but would not be recommended in most situations since mercury is a bioaccumulative compound, and the SIP (Section 1.4.2.2.B) and the [U.S. Environmental Protection Agency] recommends limiting dilution for bioaccumulative compounds (U.S. EPA 2010, section 5.3.2). The U.S. EPA explains, “While fish tissue contamination tends to be a far field problem affecting entire water bodies, rather than a narrow scale problem confined to mixing zones, the U.S. EPA’s guidance recommends restricting or eliminating mixing zones for bioaccumulative pollutants such as mercury so that they do not encroach on areas often used for fish harvesting (particularly for stationary species such as shellfish). Restriction or elimination might also be used to compensate for uncertainties regarding the ability of aquatic life or the aquatic system to tolerate excursions above the criteria, uncertainties inherent in estimating bioaccumulation, or uncertainties in the assimilative capacity of the water body.”</i> (31)</p> <p>(29) Staff Report, p. 10. (30) Staff Report, p. 180. See also a similar statement on p. 182. (31) Staff Report, p. 154.</p>			
Response: Comment noted.			
Letter: ACWA1, Pg44, P4	COMMENT	Excerpt: 230	Type: dilution credits/mixing zones
However, at other points the Staff Report indicates dilution credits would <i>not</i> be allowed. For example, the Staff Report indicates the following language would be included in Chapter IV of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE Plan) (the Implementation Chapter): “Dilution shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES.” (32) Presumably, this prohibition would apply			

regardless of whether a water body is on the 303(d) list of impaired waters for mercury. SWRCB Staff also indicated at the January 9, 2017, workshop that dilution credits and mixing zones would not be allowed in NPDES permits for water bodies that are impaired for mercury.			
(32) Appendix A of the Staff Report, p. A-11; capitals in original.			
Response: Please see Responses to Comment WSPA2-40, 67, and 68.			
Letter: ACWA1, Pg44, P1	COMMENT	Excerpt: 231	Type: dilution credits/mixing zone
Disallowing the use of dilution credits would contradict precedential SWRCB orders. For example, the summary for Order 2001-06 states that “A Regional Water Quality Control Board (Regional Water Board) cannot rely solely on a Section 303(d) listing as the basis for concluding that a receiving water lacks assimilative capacity for an impairing pollutant. Rather, the Regional Water Board must base assimilative capacity determinations on the relevant water quality-related data.” The facts before the SWRCB in Order 2001-06 included a water body listed as impaired for bioaccumulative pollutants but where the dilution achieved by individual discharges was so great that even the elimination of those discharges would have had no effect on pollutant concentrations in the water body or in fish. Such facts would have to be established on a site-specific basis but appear to be supported for many water bodies given the information provided in the Staff Report for the proposed mercury provisions.			
Response: Please see Responses to Comments WSPA2-11, 40, 67 and 68.			
Letter: ACWA1, Pg42, P2	COMMENT	Excerpt: 232	Type: dilution credits
The Staff Report should be amended to clearly indicate, consistent with SWRCB precedential orders, that dilution credits and mixing zones must be considered on a site-specific basis, such that if the proposed effluent limitation (without dilution) would have no discernible impact on mercury concentrations in receiving waters or in fish, dilution must be allowed.			
Response: Please see Responses to Comments WSPA2-11, and WSPA2-40.			
Letter: ACWA1, Pg44, P3	COMMENT	Excerpt: 233	Type: Objectives
5. The fish tissue objectives proposed to protect wildlife are likely to be overly conservative and should be revised to address this limitation. The fish tissue objectives proposed for wildlife protection are generally in the range of values commonly used by United States Fish and Wildlife Service (USFWS) and are generally based on peer-reviewed literature. However, in many instances the information for key species is generated using surrogates of mammals or avian species with numerous assumptions. For example, the wildlife value is based on a mallard duck reference dose of 0.021 mg/kg/day, and assumptions regarding the life histories of other avian species, body weight, etc., are used to extrapolate to a wildlife value for all other birds (presented in Appendix K Table K-1). ³⁴ It appears a similar treatment is applied to mammals, using a reference dose of 0.018 mg/kg/day; however, the species used for the determination of this reference dose is not provided (a generic citation of USFWS 2003 appears in the text without any reference to a mammal species). We recommend the mammalian reference dose as presented on page K-4 of the Staff Report in Table K-1.			
Response: The mammalian reference dose comes from USFWS and is included in the references as USFWS 2003, which refers to U.S. Fish and			

Wildlife Service’s 2003 Evaluation of the Clean Water Act Section 304(a) Human Health Criterion for Methylmercury: Protectiveness for Threatened and Endangered Wildlife in California. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Environmental Contaminants Division. Sacramento, CA. 96 p. & appendix. The Reference dose is based on toxicity studies on mink. It is not appropriate to use the mammalian reference dose on avian species. Please see Response to Comment WSPA2-76.			
Letter: ACWA1, Pg44, P4	COMMENT	Excerpt: 234	Type: Objectives
The avian reference dose derived from the mallard duck study by Heinz (1979) ³⁵ appears to be superseded by a later study by the same author. ³⁶ Heinz (1979) identified the lowest dosage of 0.5 mg/kg in diet as the lowest-observed-adverse-effect concentration (LOAEL), whereas a dietary toxicity threshold ranging from approximately 3 mg/kg to 9 mg/kg was found in more recent studies (Figure 4). ³⁷ In addition, USFWS applied interspecies and NOAEL-to-LOAEL ³⁸ uncertainty factors to derive the avian reference dose of 0.021 mg/kg/day. ³⁹ A critical review paper by Fuchsman et al. suggests the reference dose of 0.021 mg/kg/day may be too conservative. ⁴⁰ Based on the current literature, Fuchsman et al. identify/propose ranges of toxicity reference values suitable for risk assessment applications between 0.05 mg/kg/day to 0.5 mg/kg/day on a dose basis, which are a factor of 2–20 higher than the proposed reference dose. This overly conservative approach employing an artificially lower reference dose translates into a lower fish tissue concentration. While we understand this recently published information became available after the Staff Report was released for public review, SWRCB should consider the critical evaluation by Fuchsman et al. (2017) of avian threshold values in their evaluation and revise the reference dose and tissue objectives accordingly.			
Response: The reference doses and wildlife criteria were peer reviewed by Mark Sandheinrich, Ph.D. Dr. Sandheinrich stated that, “Though dated, the studies by Wobeser (1976 a,b) and Heinze (1979) likely represent the best available peer-reviewed studies that evaluated dietary concentrations of methylmercury on mammals and birds.” Dr. Sandheinrich went on to express concern that the Sport Fish Water Quality objective for trophic level 4 fish may not be fully protective of the very sensitive species, Yuma Ridgeway’s rail. Dr. Sandheinrich stated, “The Draft Report Appendix K makes a logical argument why the alternative RfDs were not used and acknowledges points of uncertainty that suggest a less stringent or more stringent objective.” Dr. Sandheinrich concludes that the objectives “may reasonably be expected to be protective of most species of piscivorous wildlife.”			
Letter: ACWA1, Pg46, P1	COMMENT	Excerpt: 235	Type: Objectives/Trophic Levels
Trophic level (TL) values were used in the Staff Report to protect wildlife that consumes prey from more than one trophic level. Clarification on ‘statewide’ TL values is needed.			
Response: Tables C-1 and C-2 in Attachment C of the Provisions list examples of trophic level 3 and 4 fish. It should be noted that these tables do not include all possible species.			
Letter: ACWA1, Pg46, P1	COMMENT	Excerpt: 236	Type: Objectives/Data
The ‘statewide’ values for some species were derived from site-specific data from only one region (i.e., Guadalupe River for Great blue heron and Forster’s tern, Clear Lake for common loon; Table K-2, Table K-3, and text on pages K-9 through K-13), and this limitation needs to be consistently documented throughout the Staff Report. ⁴¹ Knowing ‘statewide’ data are derived from a data set that does not truly			

represent the whole state or given area would allow additional site-specific data to be used preferentially over the default value, when site-specific data become available.			
Response: Please see Response to Comment ACWA1-28.			
Letter: ACWA1, Pg46, P2	NOT COMMENT	Excerpt: 237	Type: Objectives/Background Concentrations
The proposed water quality objective tissue concentrations for protection of wildlife—0.03 mg/kg in TL3 fish less than 50 mm, 0.05 mg/kg in TL3 fish less than 150 mm, and 0.2 mg/kg for TL4 fish 150–500 mm—are similar to or lower than background mercury concentrations in forage (TL3) and predatory fish (TL4). As presented in Figure H-1 of the Staff Report, mercury concentrations in largemouth bass, a common TL4 fish, are 0.4 mg/kg on average, equivalent to 2 times the wildlife value for the same TL, with concentrations that range up to approximately 0.73 mg/kg. For TL3 fish, average concentrations of mercury in rainbow trout and Chinook salmon are approximately 0.1 mg/kg, as shown Figure H-1 of the Staff Report, which are 2–3.3 times the fish concentration target calculated for this TL. A recent review by Fuchsman et al. (2016) indicated average naturally occurring Hg concentrations in forage (TL3) and predatory (TL4) fish are roughly 0.03–0.1 mg/kg and 0.1–0.3 mg/kg, respectively.			
Response: Tables L-3 and L-4 of Appendix L in the Staff Report show the average mercury concentrations by trophic level category and ratios. These ratios were then used in Appendix K of the Staff Report to determine the wildlife targets for California.			
Letter: ACWA1, Pg46, P2	COMMENT	Excerpt: 238	Type: attainability/Objectives
Given most of the mercury already in the system is from nonpoint sources, it is unlikely the proposed wildlife values of 0.03, 0.05, and 0.2 mg/kg could be attained.			
Response: Please see Response to Comment ACWA1-82.			
Letter: ACWA1, Pg46, P3	COMMENT	Excerpt: 239	Type: Objectives/ Least Tern
The California least tern prey fish water quality objective should be applied only to water bodies where the species commonly forages. Table K-5 of Appendix K lists 8 counties where this objective is to be applied. ⁴³ However, the map shown in the January 9, 2017 Staff presentation (Slide 20) includes Monterey County, which is not listed in Table K-5, and does not include Alameda or San Mateo County, which are listed in Table K-5. Because there have been very few historical regular breeding colonies between the City of Santa Barbara and Monterey Bay ⁴⁴ the objective to protect the California least tern should not be applied in Monterey County. Also, as noted in Table K-5, the spatial application of the objective should be limited to areas within a reasonable foraging distance from known breeding colonies. However, slide 20 of the Staff presentation seems to indicate that application of the objective will be applied county-wide, without regard to distance from known breeding colonies. The Staff Report should be revised to clarify that objectives to protect the California least tern should be limited to areas within a reasonable foraging distance from known breeding colonies.			
Response: Table B-1 in Attachment D of the Provisions contain a list of water bodies that are within the US Fish and Wildlife Service least tern coastal management areas. Chapter III.D.2.e.1) states that, “The California Least Tern Fish Water Quality Objective applies to waters with the WILD, MAR, and RARE beneficial uses at water bodies where the least tern or least tern habitat exists, including but not limited to the water bodies identified in Attachment D.” The Map that was included in the presentation was intended to broadly describe the potential geographic			

extent of the California Least Tern Objective. As was noted during the presentation the areas outlined were broader than where the objective would occur. This was due to limitation in our existing GIS layers which identified counties rather than exact water bodies.			
Letter: ACWA1, Pg47, P1	NOT COMMENT	Excerpt: 240	Type: Quoting Staff Report
<p>6. The water concentration targets derived from the proposed fish tissue water quality objectives are fundamentally flawed and should not be implemented at this time.</p> <p>The Staff Report derives water column concentrations based on fish tissue bioaccumulation factors (BAF)⁴⁵ and translators.⁴⁶ Proposed targets of 12 ng/L and 4 ng/L are based on the Sport Fish WQO (0.2 mg/kg in TL4 fish, 150–500 mm; see Table 3). The Staff Report uses an EPA-derived national BAF for rivers and streams to derive a water column target concentration of 12 ng/L total mercury for flowing water bodies, including rivers, creeks, and streams. The target concentration of 4 ng/L total mercury for slow-moving water bodies, such as estuaries and bays, was derived from the combined national BAF for lakes and rivers. Water target concentrations of 4 ng/L and 1 ng/L were derived for flowing waters and slow-moving waters, respectively, based on the Tribal Subsistence mercury objective (0.06 mg/kg in TL4 fish)⁴⁷ and the same national BAFs. [See footnotes 45, 46 & 47 at end of ACWA_CQA1 page 47]</p> <p>45: The bioaccumulation factor (BAF) is the ratio between the dissolved methylmercury concentration in water and the concentration of methylmercury in fish tissue.</p> <p>46: Staff Report, Appendix I. p. I-1.</p> <p>47: The default value is 0.04 mg/kg based on 30% TL4 and 70% TL3 diet, which is equivalent to 0.03 mg/kg in TL3 fish and 0.06 mg/kg TL4 fish (Staff Report, Appendix H, p. H-12). BAF and fish tissue targets in TL4 fish were used to derive water column targets (Staff Report, Appendix I, p. I-1).</p>			
Response: Please see Responses to Comments CVCWA1-11 and CVCWA1-12. Additionally, Appendix I of the Staff Report discusses the rationale for the calculation of the water column targets, including the use of BAFs and translators.			
Letter: ACWA1, Pg48, P1	COMMENT	Excerpt: 241	Type: BAFs
<p>There are several problems with SWRCB’s approach to calculating water concentration targets from the proposed fish tissue water quality objectives. First, and most importantly, application of two national BAFs to calculate mercury water concentration targets for every water body in California is inappropriate. National BAFs, California statewide BAFs, and translation factors for mercury are highly variable and uncertain.⁴⁸ National BAFs are calculated as the geometric mean of field-measured BAFs obtained from published literature.⁴⁹ As illustrated in Figure 5, national BAFs range over two to three orders of magnitude due to variability between the many different regions and water bodies reflected in the 90 percent confidence-interval range (i.e., between the 5th and 95th percentiles).</p>			
Response: Please see Responses to Comments CVCWA1-11 and CVCWA1-12. Additionally, Appendix I of the Staff Report discusses the rationale for the calculation of the water column targets, including the use of BAFs and translators. In addition the Provisions allow for several methods to develop site specific water column translators that do not rely upon BAFs.			
Letter: ACWA1, Pg48, P1	COMMENT	Excerpt: 242	Type: BAFs
<p>The Staff Report also discusses the potential use of an available California-wide BAF, but because this value is based on a limited dataset, the Staff Report proposes to use the EPA national BAFs instead.⁵⁰ However, the use of nation-wide BAFs oversimplifies the very complex process of mercury bioaccumulation and ignores site-specific conditions. A BAF is a site-specific value and is affected by numerous</p>			

<p>physical, chemical, and biological factors including among others pH, dissolved organic carbon (DOC), salinity, water flow, temperature, redox potential, sulfide and sulfate, suspended solids, nutrient loading, fish size and age, and concentration-dependent demethylation.^{51,52,53,54,55,56,57,58} There is potential for mercury methylation and bioaccumulation to vary significantly from location to location and over time (seasonally). Even within California, conditions vary considerably between regions.</p>			
<p>Response: Please see Response to Comment CVCWA1-14. In addition, Chapter IV.D.2.b.1) of the Provisions state that, “the Permitting Authority may develop a site-specific water column concentration value (C) by utilizing a site-specific bioaccumulation factor, linear regression model, or peer-reviewed model, derived from a study of a receiving water downstream of the discharge.” Therefore, other options are available if a discharger believes that the default BAF is not appropriate for that waterbody.</p>			
Letter: ACWA1, Pg49, P	COMMENT	Excerpt: 243	Type: BAFs
<p>As a result, national or statewide default values are likely to be inaccurate on a site-specific basis. As the Staff Report states, the water concentration targets based on national BAFs can be over- or under-protective in different water bodies.⁵⁹ Because of this likely possibility, EPA recommends the use of site-specific data over default national values such as those used in developing the mercury water concentration targets.^{60,61} The use of site-specific data allows the development of BAFs that are more realistic.</p>			
<p>Response: Please see Response to Comment ACWA1-42.</p>			
Letter: ACWA1, Pg49, P1	COMMENT	Excerpt: 244	Type: guidance/flowing water
<p>Second, the Staff Report lacks clear guidance on the classification of the receiving water body type as either “flowing” or “slow-moving.” The Report refers to “Table 1” for guidance, but there is no Table 1 in the document.</p>			
<p>Response: Please see Response to Comment ACWA1-245. In addition, the table referred to here is Table 6 – 1. The reference in the Staff Report has been corrected.</p>			
Letter: ACWA1, Pg49, P1	COMMENT	Excerpt: 245	Type: guidance/flowing water
<p>The Board expects individual permit writers at the Regional Boards to apply site specific information and “professional judgment” to determine which category fits best for a given water body. However, this approach seems highly subjective and open to arbitrary determinations, despite its importance given the significant difference between the two water concentration targets (12 ng/L versus 4 ng/L) and the potentially significant costs to NPDES dischargers that could result from this choice.</p>			
<p>Response: The majority of discharges are to rivers and streams, which are classified as “flowing water bodies.” As stated in Section 6.13.3 of the Staff Report, “About 7 percent of discharges within the geographic scope of the Provisions flow into water bodies that are estuaries, sloughs, or wetlands, while 10 percent of discharges are to bays (Appendix N).” The Provisions could arbitrarily classify all of these water bodies as “slow moving water bodies.” However, many of these water bodies have tidal flows or other dynamics that make them behave much like rivers and streams in terms of mercury methylation. The Provisions allow Regional Boards flexibility in designating these water bodies as “flowing water bodies” rather than arbitrarily classifying all such waters as “slow moving water bodies” based on type. The Provisions also allow for the development of site-specific bioaccumulation factors. This approach may be very useful for waters that have unusual flows.</p>			

Letter: ACWA1, Pg49, P2	COMMENT	Excerpt: 246	Type: guidance/flowing water
<p>Third, it is unclear whether estuaries should be understood as “slow-moving” water bodies, and thus whether a BAF applicable to lakes should be applied in calculating water concentration targets for estuaries. Unlike lakes, most estuaries are actively flowing water bodies containing a wide distribution of many different TL fishes. Our experience indicates that in some estuaries, waters are not “slow-moving”; for example, in Carquinez Strait in San Francisco Bay, water velocities routinely exceed the velocities measured in most rivers, such that it is wholly inappropriate to assume estuaries are “slow-moving.”⁶³ The proposal should be revised to provide clear guidance for distinguishing the two types of water bodies.</p>			
<p>Response: Please see Response to Comment WSPA2-8.</p>			
Letter: ACWA1, Pg50, P1	COMMENT	Excerpt: 247	Type: BAFs
<p>Fourth, as noted above, the Staff Report uses a BAF for rivers and streams to derive a water column target concentration of 12 ng/L for flowing water bodies and a BAF for lakes and rivers to derive a water column target concentration of 4 ng/L for slow-moving water bodies, such as estuaries and bays. Thus, the BAFs used to calculate concentration targets for flowing water bodies and slow-flowing water bodies <i>both</i> rely on data from rivers. This double use suggests that one or both BAFs may be inappropriate to the flow categories they were used to represent.</p>			
<p>Response: The rationale for the derivation of the BAFs using Lakes and Rivers to protect slow moving waters is adequately discussed in Staff Report Chapter 6.1.3 and Appendix I.</p>			
Letter: ACWA1, Pg50, P2	COMMENT	Excerpt: 248	Type: BAFs
<p>Fifth, the method of calculating water concentration targets from BAFs is flawed. A recent study by Dutton and Fisher (2014) shows that methylmercury concentrations in fish are driven by food exposure and not by water column exposure.⁶⁴ The BAF approach does not address potentially wide variability in water concentrations and assumes all compartments (water, sediment, and biota) are in equilibrium with each other. In fact, in most cases the water compartment is <i>not</i> in equilibrium with the lower portions of the food chain—thus, one of the most basic assumptions behind the use of a BAF is violated.</p>			
<p>Response: The Provisions allow for derivation of site specific water column translators. In addition the use of BAFs was submitted to peer review. The Peer Reviewer Dr. Marc Beutel stated:” In reviewing the narrative in (6.11) Issue K in the draft staff report, I agree with the need for a consistent and simple method to develop effluent limitations for mercury and to draft permits. The recommended Option 1 in Section 6.11.3 of the draft staff report, with its focus on a water column target for total mercury (Figure 6-2), seems like the most appropriate approach. This contrast with Option 2 (Figure 6-3), in which effluent limitation is based on site-specific fish mercury content. I agree that the barriers to implementing Option 2 on a wide scale, which include on-going collection and evaluation of site-specific fish tissue data, are significant.”</p>			
Letter: ACWA1, Pg50, P3	COMMENT	Excerpt: 249	Type: BAFs
<p>Sixth, the use of translators adds to the already considerable degree of uncertainty associated with the water concentration targets. Different forms of mercury and methylmercury, such as dissolved/filtered and total/unfiltered, are measured in the water column.</p>			

Responses to Comments—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 Mercury Provisions.

<p>Translators are applied to convert dissolved methylmercury concentration (obtained via the BAF method) to total mercury and to total methylmercury concentrations, which are the forms in which mercury water concentration targets are typically expressed. The Staff Report proposes water column target concentrations expressed as total mercury concentrations. Underlying the use of any type of mercury translator is the assumption that mercury levels in fish tissue will respond in a linear manner to reductions in mercury loading. Evidence indicates this relationship between fish tissue levels and loadings is much more complex and influenced by a number of interacting biogeochemical factors that are highly variable in time and space.⁶⁵ In addition, relationships used to derive the translation factors are very weak (Figure 6). The translation factor between dissolved and total mercury in a given waterbody can be highly variable, changing spatially and temporally. The Staff Report should be revised to include a detailed discussion of the variability of the translators employed in their methodology.</p>			
<p>Response: Please see Response to Comment CVCWA1-14.</p>			
Letter: ACWA1, Pg51, P1	COMMENT	Excerpt: 250	Type: BAFs
<p>In short, there are multiple problems with the Staff Report’s approach to calculating water concentration targets in the Mercury Provisions. The use of national BAFs rather than local site-specific BAFs, and the use of mercury translators, introduces enormous uncertainty into the proposed values. In addition, given the lack of clarity about what constitutes “flowing” and “slow-moving waters,” it is unclear whether the Staff Report used BAFs for the correct water body categories in calculating the concentration targets. Moreover, the use of BAFs is flawed given the faulty assumptions upon which the methodology is based, such as the assumption of equilibrium between the water, sediment, and biota compartments. Given these problems, and the potentially huge costs that NPDES dischargers would likely incur to comply with the water concentration targets if they are imposed as effluent limitations, SWRCB should revise the proposed targets and should not implement them at this time.</p>			
<p>Response: Please see Response to Comment CVCWA1-11, CVCWA1-12, and CVCWA1 - 14.</p>			
Letter: ACWA1, Pg51, P2	COMMENT	Excerpt: 251	Type: Objectives
<p>7. The proposed human health objectives may be too conservative. We share the state’s concern about protection of human health but would request that the Staff Report be revised to confirm that specific assumptions are appropriate. The Staff Report describes numerical fish tissue levels for two human health objectives: Commercial and Sport Fishing (COMM) and Tribal Subsistence (T-SUB) (Table 4).</p>			
<p>Response: Please see sections 3.10 and 6.2 of the Staff Report explain why certain fish consumption rate and fish tissue MeHg concentrations are appropriate in calculating the mercury water quality objectives for COMM and T-SUB.</p>			
Letter: ACWA1, Pg52, P1	COMMENT	Excerpt: 252	Type: Objectives
<p>The proposed fish tissue concentration for COMM is 0.2 mg methylmercury/kg in highest TL fish (TL4, e.g., largemouth bass; fishes in this trophic level contain the highest concentrations of mercury). This value is similar to the Fish Contaminant Goal (FCG) of 0.22 mg methylmercury/kg developed by the Office of Environmental Health Hazard Assessment (OEHHA). The difference between the two fish tissue concentrations (the proposed COMM and OEHHA FCG) arises from the use of a Relative Source Contribution value (see the next</p>			

comment) in the proposed COMM fish tissue concentration but not in the OEHHA FCG. The OEHHA FCG of 0.22 mg/kg is non-enforceable but has been used since 2012 for water quality assessment purposes in the State, according to the Mercury Provisions. EPA developed a national criterion for fish tissue of 0.3 mg methylmercury/kg in 2001, but the Staff Report did not adopt that value.			
Response: As stated in Staff Report Section 6.2, there is no statewide policy for fish tissue water quality objectives; and the U.S. EPA recommends individual states to derive the water quality criteria, as these criteria are highly site-specific. After considering various available studies and researches, the staff recommends use 0.2 mg/kg methylmercury in fish tissue, which only applies to the Sport Fish Water Quality Objective to protect both human health and wild life (see Option 2 under Section 6.2 for further information).			
Letter: ACWA1, Pg52, P2	COMMENT	Excerpt: 253	Type: Objectives
Currently, the only enforceable concentration for mercury is for water as established in the California Toxics Rule (CTR) to protect people from consuming mercury from fish caught recreationally; the fish tissue concentration for mercury used to derive the CTR water criterion was 0.37 mg/kg. There is no statewide criterion that addresses subsistence fishers.			
Response: Comment noted. Information and data was used to derive the CTR water criterion is now outdated and it is not protective of the Sport Fish Water Quality Objective.			
Letter: ACWA1, Pg52, P3	COMMENT	Excerpt: 254	Type: Objectives
The proposed fish tissue concentration for the T-SUB is 0.04 mg methylmercury/kg, assuming a diet comprised of 70% TL3 fish and 30% TL4 fish. This proposed concentration is similar to EPA’s national criterion for subsistence fishing of 0.05 mg methylmercury/kg and matches the fish concentration of 0.04 mg methylmercury/kg developed for Oregon’s Columbia River Tribes. EPA has proposed even lower fish concentrations for subsistence fishing in Washington (0.033 mg methylmercury/kg) ⁷³ and Maine (0.02 mg methylmercury/kg). ⁷⁴ While EPA has promulgated a fish concentration of 0.03 mg methylmercury/kg for Washington, ⁷⁵ the state of Maine is contesting EPA’s proposal of 0.02 mg methylmercury/kg.			
Response: The 0.04 mg methylmercury/kg fish tissue concentration is only for the T-SUB beneficial uses in Native American tribal areas. It will not affect the majority of surface water bodies that have COMM beneficial use. As stated in the Staff Report Option 2 in Section 6.2, the 0.04 mg MeHg/kg fish tissue concentration is based on the recent Tribes Fish Use study, which shows the higher fish consumption rate by the Native Americans. Thus, the 0.04 mg MeHg/kg is necessary to protect human health in the Native American tribal area.			
Letter: ACWA1, Pg53, P1	NOT COMMENT	Excerpt: 255	Type: Objectives
The Staff Report and appendices ⁷⁶ describe the assumptions and values used in the calculations of the human health objectives (COMM and T-SUB), which are fish tissue concentrations. The equation used to calculate the proposed fish tissue concentrations for COMM and T-SUB is: $FTC = (BW*(RfD - RSC))/FI$ FTC = a fish tissue concentration in milligrams (mg) methylmercury per kilogram (kg wet weight) fish. The FTC value is the methylmercury WQO. BW = average human body weight; a value of 70 kg was used.			

RfD = reference dose of 0.0001 mg methylmercury/kg body weight/day was used. This value is EPA’s Rfd for oral exposure of methylmercury.

RSC = relative source contribution, estimated at 2.7×10^{-5} mg methylmercury/kg body weight/day. This value is subtracted from the reference dose to account for other sources (e.g., store bought marine fish).

FI = fish intake rate or fish consumption rate (kg fish wet weight/day). A value of 0.032 kg/day (32 g/day) is used for COMM, and a value of 0.142 kg/day (142 g/day) is used for T-SUB.

Response: Comment noted.

Letter: ACWA1, Pg53, P2	COMMENT	Excerpt: 256	Type: Objectives
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While the assumptions and values used are EPA default values or specifically based on California data where available, there may be a compounding effect of conservatism, which may result in lower fish tissue concentrations for the objectives than necessary. In other words, the combined impact of the multiple conservative assumptions about exposure and toxicity may lead to the compounding of uncertainty factors only in one direction (i.e., toward worst case) and may result in target fish tissue concentrations that may not be representative of the actual dose and exposure and that may be lower than necessary . For instance,

Response: Please see Responses to Comments ACWA-CWA1-252 and 254 above.

Letter: ACWA1, Pg54, P1	COMMENT	Excerpt: 257	Type: Objectives
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The RfD is EPA’s maximum acceptable oral dose of a chemical; it is defined as “an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.” While EPA’s RfD of 0.0001 mg/kg/day for methylmercury is the standard toxicity value commonly used, EPA applied uncertainty factors to derive the value. While uncertainty factors are intended to provide protection in the face of uncertainty, the compounding of several or many uncertainty estimates can result in overprotective values. In this case, if the RfD is lower than necessary, the fish tissue concentration also will be lower than necessary.

Response: The human health on fish consumption is part of the biological science, which belongs to the category of descriptive science (versus instructional science such as mathematic, chemistry, etc.). The biological science is specific to each individual and are affected by various environmental conditions, thus there is always certain degree of uncertainty involved. However, to protect a group of individuals, we will have to select one criterion based on the best available study, data, survey, etc. The Staff section 6.2 gives detailed rationale on how and why the fish consumption and fish MeHg tissue concentrations are derived.

Letter: ACWA1, Pg54, P2	COMMENT	Excerpt: 258	Type: Objectives
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The RSC is the mean daily exposure estimate of methylmercury from other sources, in this case from store-bought marine fish; EPA developed a default value of 2.7×10^{-5} mg/kg/day in their 2001 water quality criteria for methylmercury. Applying an RSC value of 2.7×10^{-5} mg/kg/day to the RfD drives down the RfD to 0.000073 mg/kg/day, which in turn lowers the calculated fish tissue concentration. While EPA’s default RSC value for methylmercury was used by SWRCB to calculate fish tissue levels, other states such as Oregon have decided not to apply that value,

acknowledging that their consumption rates already account for the other sources (e.g., store bought marine fish).			
Response: Comment noted.			
Letter: ACWA1, Pg54, P3	NOT COMMENT	Excerpt: 259	Type: Objectives
The proposed fish tissue concentrations for COMM and T-SUB were derived using EPA's old default average body weight value (70 kg) ⁷⁸ rather than the revised default average body weight (80 kg) used in a later document. ⁷⁹ Using the previously reported lower body weight (70 kg) rather than the revised default weight (80 kg) also results in lower calculated fish tissue concentrations (e.g., the COMM fish tissue concentration would be 0.18 mg/kg instead of 0.16 mg/kg, before rounding). EPA has used the new default body weight (80 kg) to revise human health criteria for several chemicals ⁸⁰ but not methylmercury.			
Response: As discussed in the Staff Report Appendix N, section H.2, the increase in resulting water quality objectives between body weights of 70 kg and 80 kg is in two significant digits, between 0.005 to 0.04 mg MeHg/kg fish (see calculation in Tables H-2A and H-2B). To eliminate these subtle differences, the final objective is expressed with only one significant digit.			
Letter: ACWA1, Pg54, P4	NOT COMMENT	Excerpt: 260	Type: Objectives
The fish consumption rates used in these calculations are 32 g wet weight/day (approximately one and half 5-oz. meals per week) for COMM and 142 g wet weight/day (approximately seven 5-oz. meals per week) for the T-SUB and are based on California surveys. ⁸¹ EPA's default value for the general population, which was developed under the Clean Water Act, Section 304(a), is 17.5 g wet weight/day (approximately one 5-oz. meal per week). While EPA updated the default fish consumption rate for the general population to 22 g/day (approximately one 6-oz. meal per week), EPA has not updated its methylmercury criteria for human health to reflect this newer rate.			
Response: The statements in the comments on 32 g wet weight/day and 142 g wet weight/day fish consumption rate are incorrect. The 32 g wet weight/day is equivalent to a consumption rate of one eight-ounce meal of fish per week; and the 142 g wet weight/day fish consumption rate is based on the contemporary consumption rate for tribes of four to five meals a week from the recent Tribes Fish Use study. The 17.5 g/day fish consumption is a nationwide consumption rate and EPA recommends that states adjust the consumption rate to account for local consumption rates. Please see Staff Report sections 3.5 and 3.10 for further details.			
Letter: ACWA1, Pg55, P1	COMMENT	Excerpt: 261	Type: Objectives
Although applying these assumptions and values may not individually drive down the proposed fish tissue concentrations by a substantial amount, applying them collectively may artificially lower the fish tissue concentrations. Therefore, we recommend the Board review the assumptions and values in the proposed human health objectives for COMM and T-SUB in the Mercury Provisions.			
Response: Please see Responses to Comments ACWA1-251, and 260.			
Letter: ACWA1, Pg55, P2	COMMENT	Excerpt: 262	Type: Objectives/attainability
A further concern is that the proposed fish tissue concentrations for human health objectives (COMM and T-SUB) in the Mercury Provisions are likely unattainable. The mercury concentration in fish for T-SUB is 0.04 mg/kg, assuming a diet of 70% TL3 fish and 30% TL4 fish. As shown in Figure H-1 of the Mercury Provisions (reproduced below as Figure 7), mercury concentrations in largemouth bass, a common TL4 fish, are on average 0.4 mg/kg, ten times higher than the proposed objective, with concentrations up to approximately 0.73			

mg/kg. Average concentrations of mercury in rainbow trout and Chinook salmon (TL 3 fish) are approximately 0.1 mg/kg (Figure H-1), which are approximately 2.5 times the fish concentration calculated for T-SUB.			
Response: Please see Response to Comment ACWA1-237.			
Letter: ACWA1, Pg56, P1	COMMENT	Excerpt: 263	Type: Objectives/attainability
Given most of the mercury already in the system is from nonpoint sources, it is unlikely the proposed human health-based values of 0.2 and 0.04 mg/kg for COMM and T-SUB, respectively, could be attained. In addition, salmon largely accumulate mercury during the long time spent in the ocean, not in inland waters and estuaries where the proposed objectives would be applied. In California, freshwater fisheries currently capable of sustaining subsistence fishing tend to be limited to anadromous species such as salmon, which are largely limited to rivers of coastal northern California and tributaries of the Sacramento River. As such, WQOs for other regions of California may be inappropriate.			
Response: Please see Response to Comment WSPA2-4. In addition, although salmon do accumulate the majority of their mercury from the ocean they play a major part of the diet for many tribal members throughout California and therefore considered when determining the appropriate Tribal Subsistence Fishing Objective. A site-specific objective can be used for the Tribal Subsistence Fishing Objective where local tribal subsistence fishing information is available.			
Letter: ACWA1, Pg56, P2	COMMENT	Excerpt: 264	Type: Alternative Implementation Measures
Finally, alternative implementation measures to protect human health should be considered, particularly since reduction in environmental mercury concentrations is expected to take decades or longer. There are alternatives for lowering mercury exposure in populations of subsistence fishers other than reduction of mercury concentrations in the environment. Extensive experience has been gained in recent decades in balancing public health risks and mercury exposure in indigenous populations in the Canadian Arctic and the Brazilian Amazon that are dependent on fish consumption. This experience has led to several strategies to maintain fish consumption while reducing mercury exposure; these strategies can be implemented where it is impossible to reduce environmental mercury concentrations. These interventions through public health education include:			
Response: Please See Response to Comment ACWA1-265.			
Letter: ACWA1, Pg57, P1	COMMENT	Excerpt: 265	Type: Alternative Implementation Measures
<ul style="list-style-type: none"> • Guidance on mercury status of fish species to encourage consumption of less contaminated species • Guidance on which waters contain higher mercury levels so that they can be avoided • Encouraging greater fruit consumption, which may be protective against the bioaccumulation of mercury in human populations exposed via dietary intake of fish. 			
Response: Section 6.14 of the Staff Report discusses the issue of public education and a public exposure reduction program. Section 6.14.2 states, “The work of educating the public on health issues generally falls under the mandate of the CDPH, OEHHA, or the County Health Departments. However, for example, the County Public Health Departments have many other mandates concerning more immediate health issues, and those mandates provide the agencies with funds to implement them.” The staff recommendation in Section 6.14.3 is to continue to			

support other public agencies in their efforts to educate the public on this issue. Section 6.14 of the Staff Report does acknowledge that both the San Francisco Bay TMDL and the Sacramento – San Joaquin Delta TMDL include public education and exposure reduction components. Regional Boards could continue to include public education and exposure reduction requirements in future TMDLs.			
Letter: ACWA1, Pg57, P2	COMMENT	Excerpt: 266	Type: typo/language
This section of the Mercury Provisions also contains several significant typographical errors that require correction. On page H-9 of Appendix H (Section H.3.3), the report states “Two example trophic level specific objectives were derived that would protect consumption of one fish meal per week (0.016 mg/kg in fish tissue on average, from Table H-2A).” The value 0.016 mg/kg appears to be a typo. Based on Table H-2A, the value should be 0.16 mg/kg.			
Response: Comment noted. A change has been made to correct the error in Appendix H.			
Letter: ACWA1, Pg57, P3	COMMENT	Excerpt: 267	Type: Wetlands/Non-Point Sources
8. The proposed action to address dredging, wetlands, and nonpoint sources of mercury is vague and does not prescribe or prevent any specific actions.			
The Mercury Provisions present three options to “control mercury discharges from dredging, wetlands and nonpoint source discharges (other than legacy mines... and current NPDES permitted discharges)” ⁸⁵ :			
<i>Option 1. No Action.</i>			
<i>Option 2. Emphasize that under existing law the Water Boards have discretion to address nonpoint source discharges of mercury and methylmercury production in wetlands and the Water Boards should consider such implementation measures in areas with elevated mercury concentrations.</i>			
<i>Option 3. Establish new requirements</i>			
Response: Please see Response to Comment ACWA1-201.			
Letter: ACWA1, Pg57, P4	COMMENT	Excerpt: 268	Type: Wetlands
Of the three options presented to reduce mercury impact from wetlands, the Staff Report recommends Option 2, which allows for the use of existing law to implement mercury controls where warranted and seeks to emphasize their use in areas of “elevated” mercury. Specifically, the Staff Report identifies areas of “elevated” mercury as locations with mercury of 1 ppm or higher or areas with a history of mercury or gold mining. ⁸⁶ However, this recommendation is vague and does not prescribe (or prevent) any specific action. It is unclear how this is different from Option 1, “No Action.”			
Response: As stated in Section 6.10.3 of the Staff Report, “This option would acknowledge existing authority and provide some guidance to programs on where mercury should be addressed and what should be done.” The Provisions do not change the regulatory authority of the Permitting Authority, but they do include in Chapters IV.D.5, 6, and 7 of the Provisions, items that the Permitting Authority should consider when regulating nonpoint source discharges, dredging activities, and wetland projects in relation to mercury.			
Letter: ACWA1, Pg57, P5	COMMENT	Excerpt: 269	Type: Wetlands
It is also unclear how Option 2 is intended to be implemented. In the discussion of wetlands management in Appendix Q, the Staff Report			

<p>identifies several factors which may be used to minimize mercury transport or methylmercury production, but all of these are areas of active research rather than established management procedures.⁸⁷ The science to determine which environmental factors are important in controlling the production of methylmercury in wetlands is still evolving, and the relative importance of the many factors which can influence mercury chemistry can vary from site to site.</p>			
<p>Response: Because the science is still evolving on how to minimize mercury methalization in wetlands, the Provisions purposefully do not place strict requirements on wetlands to manage mercury in a specific way. The Provision affirm the regulatory authority that the Permitting Authority already has to require management practices to minimize the production of methylmercury in wetlands. The Permitting Authority will need to use the best available science to determine the most appropriate management practices for each wetland under their authority.</p>			
Letter: ACWA1, Pg58, P1	COMMENT	Excerpt: 270	Type: Wetlands
<p>There are no established best management practices to reduce the production or transport of methylmercury in wetlands. The Staff Report acknowledges this in Appendix Q but describes wetland studies with “potential” methods to control mercury transport and methylation. Some of the potential management procedures described in Appendix Q are relatively untested, and their possible utility for mercury control on a wide scale is unknown, while others are more applicable and/or straightforward to implement.</p>			
<p>Response: Please see Response to Comment ACWA1-269, In addition, the intent of appendix Q is to summarize “recent studies on potential methods to control mercury or methylmercury into or coming out of a wetland.” Appendix Q notes, “None of these methods are formally established best management practices, but best management practices could be developed in the future from such studies.” These are only possible options for controlling mercury and should be used with careful consideration.</p>			
Letter: ACWA1, Pg58, P2	COMMENT	Excerpt: 271	Type: Wetlands
<p>For example, settling ponds to reduce sediment load (and potential mercury transport) to other water bodies is a reasonable approach, but care must be taken to minimize potential methylation and/or bioaccumulation in such a system, as the slow-moving conditions required for settling to occur may also be conducive to anoxic conditions that favor mercury methylation. Similarly, wetting/drying cycles, especially in areas with significant organic matter, have been shown to contribute to the production of methylmercury.⁸⁹ Managing water flow to minimize wetting/drying cycles caused by water level fluctuation is a reasonable management approach for agricultural or other managed wetlands, but it is not possible at this time to quantify the predicted effect that this would have in any specific system.</p>			
<p>Response: Please see Response to Comment ACWA1-270.</p>			
Letter: ACWA1, P58, P3	COMMENT	Excerpt: 272	Type: Wetlands
<p>In contrast, the recommended use of coagulants for mercury removal in settling ponds is based on a single paper, which used experimental coagulants to attempt to minimize methylmercury bioaccumulation and transport.⁹¹ This study used a single environmental site and a limited time frame (approximately 1 year). The practicality of treating a large wetland or agricultural system using a similar approach is not discussed. There would likely be issues with mercury accumulation in the pond and with the potential to re-methylate mercury in new locations if the coagulated mercury is transported to locations with different chemistry. This is not addressed in either the Staff Report or the cited paper. Additionally, while both experimental treatments reduced the amount of methylmercury produced, only one of the two chemical coagulants reduced the amount of methylmercury accumulated in biota, consistent with other publications reporting that the total mercury concentration</p>			

is not always the controlling factor in mercury bioaccumulation.⁹² The suggested use of coagulants as a management practice in California wetlands is premature.

Response: Please see Response to Comment ACWA1-270.

MerclD1**Author:** Jolie-Anne S. Ansley **Title:** Comments from Merced Irrigation District **Organization(s):** Merced Irrigation District**Address:** [Click here to enter text.](#)**Interest Group:** POTW**Date:** 2/17/2017**Contact person:** Jolie-Anne S. Ansley**Phone:** 415 957 3320**E-mail:** jsansley@duanemorris.com

Letter: MerclD1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Merced Irrigation District (“MID”) appreciates the opportunity to provide you with comments to the Proposed Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Beneficial Uses and Mercury Provisions (“Provisions”).			
Response: Comment noted.			
Letter: MerclD1, Pg1, P1	NOT COMMENT	Excerpt: 2	Type: Summary
MID is a California irrigation district and the owner and operator of the Merced River Hydroelectric Project licensed by the Federal Energy Regulatory Commission. MID diverts water from the Merced River primarily for irrigation use. Lake McClure is MID’s principal water storage reservoir.			
Response: Comment noted.			
Letter: MerclD1, Pg1, P1	NOT COMMENT	Excerpt: 3	Type: Summary
Accordingly, MID has a direct interest in the proposed Provisions, which because they have Statewide application, may apply to segments of the Merced River including reservoirs such as Lake McClure.			
Response: Comment noted.			
Letter: MerclD1, Pg1, P2	NOT COMMENT	Excerpt: 4	Type: Summary
MID has participated previously in outreach meetings regarding the proposed beneficial use categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing and subsistence fishing by other cultures and individuals, and hereby incorporates its previous comments submitted on June 29, 2016, a copy of which is attached here as Exhibit A.			
Response: Comment noted. In addition, Please see Response to Comment MerclD1-58.			
Letter: MerclD1, Pg2, P1	NOT COMMENT	Excerpt: 5	Type: Summary
According to the issued Draft Staff Report, including Substitute Environmental Documentation (SED) (collectively “Draft Staff Report”), the			

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Provisions would establish the following: (1) three new beneficial uses pertaining to tribal traditional and cultural use, tribal subsistence fishing use and subsistence fishing use by other cultures or individuals (2) one narrative and four numeric mercury water quality objectives to protect numerous beneficial uses involving human health and aquatic dependent wildlife; and (3) a program of implementation to control mercury discharges.			
Response: The comment is accurate.			
Letter: MercID1 , Pg2, P1	NOT COMMENT	Excerpt: 6	Type: Summary
This program of implementation to control mercury discharges is separate and distinct from the ongoing project referred to as the statewide mercury control program for reservoirs (hereinafter “reservoir program”), which is intended to establish “a program to implement the Provisions’ water quality objectives for Commercial Sport Fishing (COMM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE) in all California reservoirs impaired by mercury for those uses.” (Draft Staff Report, p. 4.) However, if the reservoir program is not adopted by the State Water Resources Control Board (“Board” or “Water Board”), the Draft Staff Report states that these Provisions will be implemented on a case-by-case basis for discharges to reservoir, as described in Section 6.13.3 of the Draft Staff Report.			
Response: The Water Quality Objectives apply to all non-ocean surface waters, including reservoirs. Due to the potential differences in reservoir operations the water column translators, which are for use for non-storm water NPDES permitting, are to be determined on a case-by-case basis. There are only nine NPDES wastewaters or industrial discharges directly to reservoirs (See Staff Report Appendix N Table N-3c. While the Reservoir TMDL is contemplating reservoir operations and fish management operations as a possible component for controlling methyl-mercury production in reservoirs there are no similar requirement in the provisions (see http://www.waterboards.ca.gov/water_issues/programs/mercury/reservoirs/ for information of the reservoir TMDL) There are no implementation requirement for discharges from reservoirs or to operation of reservoirs.			
Letter: MercID1 , Pg2, P2	COMMENT	Excerpt: 7	Type: Insufficient Public Review
1. Public Outreach			
As noted above, MID participated in the public outreach meetings for the proposed tribal and subsistence beneficial uses that took place in 2016 as described in section 2.6.5 of the Draft Staff Report. That process had specially designated meetings for input from water agencies and agricultural representatives. (See Draft Staff Report, Table 2-2.) In contrast, the focus group meetings on the Provisions’ key elements, including on the reservoir program, in 2014, did not include a focus group meeting to gain public input specifically from water agencies, reservoir operators or, more broadly, agricultural interests. (See Draft Staff Report, Table 2-1.)			
Response: The irrigation district’s attendance at the public outreach meetings is appreciated as public input is important to the success of this project. The State Water Board conducted significant outreach as described in Chapter 2.6 of the Staff Report, which details the focus group meetings and project scoping conducted by the State Water Board in compliance the provisions of CEQA pursuant to Public Resources Code sections 21080.5, 21159 and CEQA Guidelines sections 1520 through 15253, and the State Water Board’s Regulations for Implementation of the California Environmental Quality Act of 1970, California Code of Regulations, title 23, sections 3720 through 3781.			
Letter: MercID1 , Pg2, P2	COMMENT	Excerpt: 8	Type: Insufficient Public Review

Because the Provisions at issue do or could implicate mercury levels in rivers and reservoirs, specific focus group meetings to obtain the input of water agencies should have been conducted.			
Response: Please see Response to Comment MerclD1-7.			
Letter: MerclD1, Pg2, P3	COMMENT	Excerpt: 9	Type: CEQA
2. Improper Segmentation Under CEQA			
There currently is no statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries. (Draft Staff Report, p. 1 n. 2.)			
Response: The footnote to page 1 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) acknowledges that the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE Plan) is not yet adopted.			
Letter: MerclD1, Pg2, P3	COMMENT	Excerpt: 10	Type: ISWEBE
Instead of preparing, reviewing and adopting the intended ISWEBE Plan in one proceeding, the Plan is being prepared in individual parts or chapters over many years with no disclosed overarching framework or environmental review of the plan as a cohesive whole.			
Response: Please see Responses to Comments ACWA1-180, MerclD1-11, and MerclD1-15			
Letter: MerclD1, Pg2, P3	COMMENT	Excerpt: 11	Type: ISWEBE
The Provisions represent Part 2 of the ISWEBE Plan yet to be adopted by the Water Board with Appendix A to the Draft Staff Report containing the proposed text to be added to Chapter II of the future ISWEBE Plan. In addition to addressing only one part or aspect of the proposed ISWEBE Plan, the Provisions further segment or separate consideration and analysis of the impacts of setting water quality criteria for mercury for particular beneficial uses (e.g., COMM or WILD) by addressing non-reservoir water bodies separately from the establishment of mercury water quality criteria for the same beneficial uses in California reservoirs.2 (Draft Staff Report, p. 4.)			
Response: Please see Responses to Comments ACWA1-180, and MerclD1-15. The Staff Report identifies similarities between the proposed rulemaking project and other programs, including elements of the ISWEBE Plan and the Reservoir Plan. Chapter 8.7 of the Staff Report presents the required analysis and discussion of the cumulative environmental effects of the project when viewed in connection with the effects of related past projects, other current projects, and all probable future projects. (Cal. Code Regs., tit. 14, § 15065 (a) (3)). The discussions of cumulative effects included in Chapter 8.7 is not required to provide as great detail as is provided for the effects attributable to the project alone. The discussion is guided by the standards of practicality and reasonableness, and focuses on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. (Cal. Code Regs., tit. 14, § 15130 (b)).The analysis and discussion provided in Chapter 8.7 of the Staff Report (along with the description of related government mercury programs included in Appendix E), results in a full disclosure of all anticipated cumulative environmental effects of the project and related programs as required by CEQA. (Cal. Code Regs., tit. 14, § 15130 (a) and (b)). Full disclosure of all anticipated cumulative environmental effects acts to mitigate concerns over segmentation of related projects.			
Letter: MerclD1, Pg3, P1	COMMENT	Excerpt: 12	Type: CEQA
Though the environmental review for the Provisions is done through Substitute Environmental Documentation, the State Water Board must still comply with CEQA’s substantive goals and policies, including the policy of avoiding significant adverse effects on the environment where feasible. (Draft Staff Report, p. 15 citing 14 Cal. Code Regs. § 15251(g); <i>see also City of Arcadia v. State Water Resources Control Board</i> , 135			

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Cal.App.4th 1392, 1422 [when conducting its review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA.]			
Response: As described in Section 2.6 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report), the Staff Report satisfies the provisions of CEQA, pursuant to Public Resources Code sections 21080.5, 21159 and CEQA Guidelines sections 1520 through 15253, and the State Water Board’s Regulations for Implementation of the California Environmental Quality Act of 1970, California Code of Regulations, title 23, sections 3720 through 3781. This includes compliance with all requirements for a certified regulatory program under Cal. Code Regs., tit. 14, § 15251(g).			
[Chapters 8 and 9 of the Staff Report contain a detailed analysis of reasonable alternatives and mitigation measures.			
Letter: MerclD1, Pg3, P1	COMMENT	Excerpt: 13	Type: CEQA
Key to CEQA’s goal of avoiding significant adverse effects on the environment is a complete project description. A complete project description is necessary to ensure that all of the project’s environmental impacts are considered. (<i>City of Santee v. City of San Diego</i> , 214 Cal.App.3d 1438, 1452.) CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, but that the project as a whole be subject to environmental review. (<i>Id.</i> citing <i>Bozung v. Local Agency Formation Com.</i> (1975) 13 Cal.3d 263, 283-84.)			
Response: A complete project description is provided in Chapter 2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report). A complete description of the environmental effects of the project is included in Chapter 8 of the Staff Report. Also, Please see Responses to Comments ACWA1-180, MerclD1-11, and 15.			
Letter: MerclD1, Pg3, P2	NOT COMMENT	Excerpt: 14	Type: ISWEBE Shouldn't Be in Parts
Here, the Project, the Provisions, is not the ISWEBE Plan but rather solely Part 2 of the ISWEBE.			
Response: A specific project description is included in the Introduction to Chapter 1 and in Chapter 2.1 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report). The project is titled “Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial uses, Mercury Provisions”, and is referred to as "the Provisions."			
Letter: MerclD1, Pg3, P2	COMMENT	Excerpt: 15	Type: ISWEBE Shouldn't Be in Parts
While the cumulative impacts analysis includes the adopted Part 1 Trash Provisions to the ISWEBE Plan and mentions other planned future components of the ISWEBE Plan (e.g., Bacteria Amendments), these other future components of the Plan are currently not yet fully developed. Moreover, it is unknown what the final ISWEBE Plan will include.			
Response: The cumulative impacts analysis is contained in Chapter 8.7 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report). Under CEQA, the State Water Board is required to conduct an analysis of whether the incremental environmental effects of the project are cumulatively considerable when viewed in connection with the effects of past projects, other current projects, and the effects of probable future projects (Cal. Code Regs., tit. 14, § 15065 (a) (3)). Chapter 8.7 includes a cumulative impacts analysis and discussion of the project when viewed in connection with the Part 1 Trash Provisions, the Bacteria Amendments, and other programs because these analyses			

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and discussions are required under CEQA (Cal. Code Regs., tit. 14, § 15130 (a) (3)). The discussions of cumulative impacts included in Chapter 8.7 is not required to provide as great detail as is provided for the effects attributable to the project alone. The discussion is guided by the standards of practicality and reasonableness, and focuses on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact (Cal. Code Regs., tit. 14, § 15130 (b)).			
Letter: MercID1, Pg3, P2	COMMENT	Excerpt: 16	Type: ISWEBE Shouldn't Be In Part
By segmenting the analysis and approval of individual parts of the statewide ISWEBE Plan, a full analysis of the impacts of the Plan as a whole is precluded, particularly since the development of the plan is occurring over such an extended time frame.			
Response: Please see Responses to Comments ACWA1–180, MerdclD1–11, and 15.			
Letter: MercID1, Pg3, P3	COMMENT	Excerpt: 17	Type: ISWEBE Shouldn't Be In Parts
Even if the environmental review of individual components of the Plan were proper, the Provisions further segment the review of establishing of water quality criteria for mercury for California waters by separately conducting the reservoir program.			
Response: Please see Responses to Comments ACWA1-180, MerdclD1-11, and MerclD1-15.			
Letter: MercID1, Pg3, P3	COMMENT	Excerpt: 18	Type: CEQA
Because the reservoir program is not yet developed and its potential reservoir management actions for compliance have not yet been validated, the Staff Report concludes that a full cumulative impact analysis is speculative at this time. By separating the Provisions and the reservoir program into two distinct projects, one of which is developed and the other in the early stages of development, a complete environmental analysis of the potential cumulative impacts from the establishment of water quality criteria for waters eventually intended to be covered by the ISWEBE plan is also precluded.			
Response: Please see Responses to Comments ACWA1-180, MerdclD1-11, and 15.			
Letter: MercID1, Pg4, P1	COMMENT	Excerpt: 19	Type: Beneficial Uses
3. Statewide Adoption of Proposed Beneficial Uses			
No information put forward in the Staff Report demonstrates that statewide establishment of these proposed beneficial uses is necessary or preferable.			
Response: In October 2013, California tribes and environmental justice groups petitioned the State Water Resources Control Board (State Water Board) to consider whether the current beneficial use definitions in the Regional Water Quality Control Plan (basin plans) adequately protect Tribal cultural practices and traditional uses of waters by California tribes, subsistence fishing by California tribes, and subsistence fishing by other communities and individuals. The Board agreed and directed staff of the Division of Water Quality and the Office of Public Participation to develop these beneficial uses through stakeholder engagement and discussion. Please see the Staff Report Introduction and Staff Report sections 2.3.1, 3.1 and 3. For a discussion of the need and necessity of establishing beneficial use definitions.			
Letter: MercID1, Pg4, P1	COMMENT	Excerpt: 20	Type: Beneficial Uses
Instead, where appropriate, such beneficial uses should be defined by the Regional Water Quality Control Boards if needed in their respective			

region. This apparently is already the case in Region 1 where the applicable water quality control plan includes a Native American culture beneficial use and a subsistence fishing beneficial use.			
Response: The development of these beneficial uses helps to streamline the designation process by providing a consistent definition. As the comment suggests, designation will be left to the Regional Water Boards and will include a public participation process. Also, Please see Response to Comment WSPA-2 and Appendix T, question 6.			
Letter: MerciD1, Pg4, P2	COMMENT	Excerpt: 21	Type: Beneficial Uses
The benefits of allowing regional designation of tribal traditional and cultural use, tribal subsistence fishing use and other subsistence fishing use is that it allows the water quality criteria to protect such beneficial uses to be tailored to the use in that region. In the case of the subsistence fishing uses, tribal or otherwise, the water quality criteria can be tailored to the level of consumption, species consumed and other environmental conditions of the water body at issue instead of assuming a one-size-fits-all criteria for the state.			
Response: Comment noted. The Staff Report concurs with this sentiment.			
Letter: MerciD1, Pg4, P2	NOT COMMENT	Excerpt: 22	Type: Summary
As the Draft Staff Report acknowledges, the data on subsistence fishing indicates that the use is variable across the state and also that the use of local data is preferred by the U.S. EPA. (Draft Staff Report, p. 118 [justifying a narrative water quality standard for mercury for the subsistence fishing use].)			
Response: Comment noted.			
Letter: MerciD1, Pg4, P3	COMMENT	Excerpt: 23	Type: Beneficial Uses
The ability to regionally define and designate beneficial uses is particularly relevant for the proposed Tribal Tradition and Cultural Use (“CUL”), which, as defined, covers a broad and largely unspecified range of activities. (Draft Staff Report, pp. 77-78.)			
Response: Comment noted.			
Letter: MerciD1, Pg4, P3	COMMENT	Excerpt: 24	Type: Beneficial Uses
The Draft Staff Report acknowledges the lack of clarity on the multitude of activities covered by this beneficial use, admitting that the proposed language covers an unknown number of tribal traditional and cultural uses among the more than 100 tribes recognized by the State of California. (Id.) The Draft Staff Report goes on to note that such tribal traditions and “lifeways” are closely linked to the natural resources available in the tribal areas. (Id.) The lack of clarity on the activities covered by the CUL beneficial use and the variability between regions of the state argues against a statewide beneficial use designation with corresponding state-wide water quality criteria and in support of regional definition of tribal traditional and cultural beneficial uses.			
Response: The Staff Report discusses a range of activities that could be covered under the proposed CUL definition in Chapter 4.10. The Provisions require Tribal confirmation that the uses are appropriate. At the time of designation the Water Boards will review the information on the particular suite of cultural uses, and their nexus to Water Quality and, at that time will identify any water quality objectives that may be necessary to protect the newly designated beneficial use (see Chapter 6.2.4 pg. 104). The Provisions do adopt water quality objectives to support both the T-SUB and CUL beneficial use for mercury in fish tissue.			

Letter: MercID1, Pg4, P3	COMMENT	Excerpt: 25	Type: Beneficial Uses
In particular, the use of statewide numeric water quality criteria, as with the two proposed tribal beneficial uses, can lead to under or overprotective water quality criteria, the environmental and economic impacts of which are impossible to assess based on the information in the Draft Staff Report, since it is unknown which waters of the state will receive these additional designations, or in the case of the CUL beneficial use, which activities are covered.			
Response: Please see Appendix R for a discussion of the economic impacts. The other concerns raised in this comment should be brought to the attention of the applicable Regional Water Board during the public participation process for the designation of beneficial uses and the activities covered under the uses. Also, Please see Response to Comment WSPA2-13.			
Letter: MercID1, Pg4, P4	COMMENT	Excerpt: 26	Type: Beneficial Uses
4. Tribal Tradition and Cultural Use			
As noted above, the proposed Tribal Tradition and Cultural Use is ambiguous and open-ended in what practices constitute traditional and cultural uses to be protected, raising the potential for inconsistent interpretations and application.			
Response: Please see Response to Comment MercID1-20. If the commenter has specific suggestions for changes to the language, such submittals would be welcomed and considered accordingly.			
Letter: MercID1, Pg4, P4	COMMENT	Excerpt: 27	Type: Beneficial Uses
In particular, the undefined and unfamiliar term “lifeways” is incomprehensible.			
Response: The term “lifeways” is explicitly defined in Appendix B.			
Letter: MercID1, Pg4, P4	COMMENT	Excerpt: 28	Type: Beneficial Uses
Because the proposed language is open-ended and largely undefined, it is impossible to assess the potential application of this proposed beneficial use to a particular water body, to determine any overlap with existing, beneficial uses or to determine the potential impacts to water users or the environment from corresponding water quality criteria.			
Response: This type of analysis would be conducted during the public participation process that is required for designation of any water body.			
Letter: MercID1, Pg5, P	COMMENT	Excerpt: 29	Type: Beneficial Uses
Any beneficial use for Tribal Tradition and Cultural Use should be more precisely worded so as to clearly define the practices protected, and, where needed, terms should be defined.			
Response: The designation will be done on a case-by-case basis by the Regional Water Boards. Please see Appendix T, question 11.			
Letter: MercID1, Pg5, P1	COMMENT	Excerpt: 30	Type: Beneficial Uses
Particularly problematic is the inclusion of traditional and cultural uses of water for navigation. The types of navigation covered by this beneficial use and the distinction from the current Navigation beneficial use is entirely unclear.			
Response: Please see Response to Comment MercID1-26.			
Letter: MercID1, Pg5, P1	COMMENT	Excerpt: 31	Type: Beneficial Uses
More worrisome, the Draft Staff Report mentions that flow objectives could be set for the reasonable and beneficial protection of this and other			

Responses to Comments—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 Mercury Provisions.

<p>traditional and cultural uses, including through 401 water quality certifications. Without an understanding of the types of activities that traditional or cultural navigation is intended to encompass, there is no way to determine the potential impacts to water quantity from the setting of such flow objectives to protect a tribal traditional or cultural use of water for navigation.</p>			
<p>Response: Please see Responses to Comments MerCID1-29, and ACWA1-165.</p>			
Letter: MerCID1, Pg5, P2	COMMENT	Excerpt: 32	Type: Beneficial Uses
<p>Under the current proposed wording, it is conceivable that existing beneficial uses adequately protect all of the traditional and cultural uses of water sought to be protected.</p>			
<p>Response: Agreed, this is a possibility. Regional Water Board Staff will consider existing beneficial use designations and water quality objectives as part of any new designation. Please also see Appendix T questions 4 and 5. Also, Please see Response to Comment MerCID1-24.</p>			
Letter: MerCID1, Pg5, P2	COMMENT	Excerpt: 33	Type: Beneficial Uses
<p>The Draft Staff Report does not provide sufficient evidence demonstrating that existing beneficial uses will not be sufficiently protective of these activities, merely suppositions. (See Draft Staff Report, pp. 104-111.)</p>			
<p>Response: Please see Response to Comment MerCID1-32 as well as Appendix T question 5.</p>			
Letter: MerCID1, Pg5, P2	COMMENT	Excerpt: 34	Type: Beneficial Uses
<p>For example, the Draft Staff Report’s conclusion that tribal consumption of fish or shellfish is not already sufficiently protected by the Commercial and Sportfishing beneficial use, or, in the case of more regular consumption, the proposed Tribal Subsistence Fishing use is largely unsupported by evidence.</p>			
<p>Response: The staff report adequately addresses the need and range of consumptions rates that are higher than that proposed for the protection of the COMM beneficial use in Chapter 4 particular chapter 4.10 : “Uses of Water by California Native American Tribes.” The Water Boards relied, in part, on a fish consumption survey for tribal consumption conducted by Dr. Frazier Shilling. Both of the proposed subsistence fishing uses are related to the amount of fish consumed, which is a higher rate than is currently protected under the sports fishing beneficial use (COMM). Also, please see Response to Comment MerCID1-32.</p>			
Letter: MerCID1, Pg5, P3	COMMENT	Excerpt: 35	Type: Beneficial Uses
<p>On page 6, the Draft Staff Report states that the function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats, which are protected and enhanced by other existing beneficial uses, but rather relate to the risks to human health from the consumption of noncommercial fish or shellfish. The Water Board needs to make clear that the same interpretation applies to the consumption of fish or shellfish as a beneficial use of water under the proposed Tribal Tradition and Cultural beneficial use.</p>			
<p>Response: Please see Appendix T, question 1.</p>			
Letter: MerCID1, Pg5, P4	COMMENT	Excerpt: 36	Type: Beneficial Uses
<p>Finally, it is unclear how such an open-ended Tribal Tradition and Cultural beneficial use will be applied (designated) by the Regional Boards.</p>			
<p>Response: Please see Response to Comment WSPA2-8.</p>			

Letter: MercID1, Pg5, P4	COMMENT	Excerpt: 37	Type: Beneficial Uses
The Draft Staff Report provides no information regarding the degree of evidence required to establish a tribal traditional and cultural use, aside from tribal confirmation and unspecified evidence from tribal communities regarding locations and timing of ceremonial and cultural activities. (See Draft Staff Report, p. 8.)			
Response: Please see Response to Comment MercID1-29.			
Letter: MercID1, Pg5, P4	COMMENT	Excerpt: 38	Type: Beneficial Uses
Other questions that remain include, but are not limited to, how longstanding, established or frequent would the use have to be, how many members of the tribe would need to be engaging in the use, and would the use have to originate from a treaty right.			
Response: This type of information will vary on a case-by-case basis and both the Clean Water Act and the California Water Code give wide discretion to the Water Boards to designate beneficial uses to Waters of the State. The specific amount, frequency and practices would be developed for any individual designation. The staff report discusses this information in Chapter 6.4.3. and will depend on multiple factors including, but not limited to, the type of use, the water body, and the pollutant be monitored. Please see question 11 of Appendix T for additional information.			
Letter: MercID1, Pg5, P5	COMMENT	Excerpt: 39	Type: Beneficial Uses
5. Tribal Subsistence Fishing			
For the Tribal Subsistence beneficial use, the amount of evidence that would be required to achieve this designation in addition to tribal confirmation is unclear.			
Response: Please see Responses to Comments MercID1-38, and MercID1-29.			
Letter: MercID1, Pg5, P5	COMMENT	Excerpt: 40	Type: Beneficial Uses
The Draft Staff Report suggests that evidence could include, but is not required to include, an angler or community consumption study demonstrating that a population or group is consuming fish at a higher rate than the average consumer. (Draft Staff Report, p. 108.) As with the Tribal Tradition and Cultural beneficial use, a large amount of uncertainty remains regarding how longstanding, established or frequent would the subsistence fishing use have to be, how many members of the tribe would need to be engaging in subsistence fishing, and would the use have to originate from a treaty right.			
Response: Comment noted. Please see Response to Comment MercID1-39.			
Letter: MercID1, Pg6, P1	COMMENT	Excerpt: 41	Type: Beneficial Uses
6. Subsistence Fishing			
Similarly, the proposed beneficial use for Subsistence Fishing is worded so broadly that it is uncertain what level of subsistence fishing in a water body, for cultural or economic reasons, is intended to trigger the designation of this beneficial use.			
Response: Comment noted. The Staff Report provides additional guidance in section 6.4.2 for Regional Water Boards to consider when			

designating a water body.			
Letter: MercID1, Pg6, P1	COMMENT	Excerpt: 42	Type: Beneficial Uses
As noted on page 108, evidence supporting designation of this beneficial use could include an angler or community consumption study but such a study is not necessarily required. The Draft Staff Report also provides little information concerning how broadly “cultural traditions” is intended to be defined or what level of economic resources constitutes a “lack of personal economic resources.”			
Response: Information regarding “cultural tradition” and “economic resources” will be determined on a specific, case-by-case basis. As discussed in Appendix T question 11 and 13, the required information will be discussed as part of the public participation process required during any water body designation.			
Letter: MercID1, Pg6, P1	COMMENT	Excerpt: 43	Type: Beneficial Uses
Considering these ambiguities, the impacts to water supplies and operations statewide could potentially be immense. The proposed wording should be revised to make clear what constitutes a “cultural use” or “lack of personal economic resources” and what level of subsistence fishing warrants protection as a subsistence fishery.			
Response: Please see Response to Comment MercID1-43. In addition, if the commenter has specific language changes to recommend, we welcome those submittals and will consider them accordingly.			
Letter: MercID1, Pg6, P2	COMMENT	Excerpt: 44	Type: Beneficial Uses
Comments Regarding Water Quality Objectives and Program of Implementation to Control Mercury Discharges			
7. Mercury Objection [sic] for the Tribal Tradition and Cultural Use			
The Tribal Tradition and Cultural use encompasses a broad and bewildering array of activities, as noted above. One of these potential activities is consumption of fish. However, a water body could be designated as having a Tribal Tradition and Cultural use unrelated to consumption of fish yet an unnecessary water quality objective to protect consumption of fish would be applied.			
Response: Section 6.4.2 of the Staff Report states, “A water quality objective for one beneficial use may be sufficiently protective of other beneficial uses. As a result, even when new beneficial uses are designated for a water body, new designations do not necessarily mean that additional water quality objectives, restrictions on waste discharges, or other new or different actions will be necessary. Existing water quality objectives for an existing beneficial use may be sufficient to protect the newly added beneficial uses.”			
Section 6.6 of the Staff Report discusses the issue of what mercury water quality objective should be adopted to protect the Tribal Tradition and Culture (CUL) beneficial use. The recommended option is to use the Sport Fish Water Quality Objective that applies to COMM as the water quality objective to protect the consumption of fish contained in the CUL beneficial use. Therefore, if a waterbody is designated with the CUL beneficial use it will have the same impact as designating a waterbody with COMM in relation to mercury in fish tissue.			
Currently there are no existing objectives to protect activities specifically related to the CUL beneficial use. If in the future such objectives are			

developed they will go through either a regional Basin Planning process or a statewide planning process and would be subject to a public participation process and Board adoption.			
Letter: MercID1, Pg6, P2	COMMENT	Excerpt: 45	Type: Implementation
For this reason, the assignment of appropriate mercury water quality objectives should be left to the Regional Water Boards given the site-specific level of fish consumption, if any, thus ensuring appropriately protective objectives on a case-by-case basis.			
<p>Response: The Regional Boards have the responsibility of determining where the objectives will apply. Chapter 5 of the Staff Report states, “The Mercury Water Quality Objectives are intended to protect the applicable beneficial uses discussed in this Chapter in all waters where they are designated in water quality control plans or where the uses exist.” In addition, Regional Boards may develop site-specific objectives as needed if the statewide objectives are not appropriate for any reason. Chapter III.D.3. of the Provisions states, “The MERCURY WAER QUALITY OBJECTIVES do not supersede any site-specific numeric mercury water quality objectives established in a Basin Plan...” some exceptions are provided. Chapter 6 of the Staff Report provides a discussion of the five mercury water quality objectives and the rationale for each objective. Regional Boards can use the information in the Staff Report and the Appendices to adjust the objectives based on site-specific considerations. In addition, the narrative water quality objective for the SUB use was chosen over a strict numeric to allow site-specific interpretation and the Provisions recommend development of site-specific information at the time of designation of the beneficial use. “When a water quality control plan designates a water body or water body segment with the Subsistence Fishing (SUB) beneficial use, development of a region-wide or site-specific numeric fish tissue mercury water quality objective is recommended to account for the wide variation of consumption rate and fish species encompassed by the SUB beneficial use.”</p>			
Letter: MercID1, Pg6, P3	COMMENT	Excerpt: 46	Type: Economics
8. Water Quality Objective for Statewide Wildlife Protection			
The Provisions recommend a water quality objective for mercury for the protection of piscivorous wildlife separate and distinct from the Sport Fish objective that will result in greater mercury monitoring efforts and costs.			
<p>Response: Chapter IV.D.2.b. of the Provisions require non-stormwater NPDES dischargers to use water column translators for effluent limits. Therefore, dischargers will not need to sample fish tissue to determine compliance for any of the objectives. If a discharger does not demonstrate reasonable potential they will not need to conduct any sampling.</p> <p>Section 6.8.3 of the Staff Report does discuss the issue of increase in monitoring needs for both the Prey Fish Water Quality Objective and the Sport Fish Water Quality Objective. The Staff Report states that, “...the monitoring for 50-150 mm prey fish could be prioritized to waters where there are no trophic level 4 fish. Monitoring for 50-150 mm prey fish could be a lower priority where sport fish monitoring applies to trophic level 4 fish.” Since there is no specific requirement for dischargers to conduct fish monitoring programs and when fish monitoring is conducted specific sizes and trophic levels can be targeted, depending on the types and sizes of the available fish, the additional objectives should not have an appreciable effect on monitoring costs.</p>			
Letter: MercID1, Pg6, P3	COMMENT	Excerpt: 47	Type: Objectives not protective

<p>The Provision’s recommendation seems to be based more on an uncertainty or lack of data and calculated estimated values (Appendix K) instead of actual field data showing that the proposed Sport Fish objective, measured in trophic level 4 or 3 fish, would not be protective of wildlife in most water bodies with the exception of the California Least Tern or a small number of additional species.</p>			
<p>Response: Section 6.8.1 of the Staff Report states, “There are currently no statewide objectives or criteria to protect wildlife from mercury in California, although site-specific objectives have been adopted for several waters including the Sacramento-San Joaquin Delta, San Francisco Bay, Clear Lake, Cache Creek, and the Guadalupe River watershed. Because of the long-standing lack of protections for wildlife, a lawsuit was filed against U.S. EPA. As a result, U.S. EPA is obligated to propose methylmercury water quality criteria to protect aquatic life and aquatic-dependent wildlife by June 30, 2017.” Therefore, it is imperative that the mercury Water Quality Objectives are protective of wildlife in California. In addition, California residents consume large amounts of fish from recreational fishing activities. Therefore, it is also important to set appropriately protective water quality objectives to protect people who consume locally caught fish.</p>			
<p>The Provisions contain separate objectives for wildlife and people to insure that both are reasonably protected from methylmercury in fish tissue. Section 6.8 of the Staff Report explains that the Sport Fish Water Quality Objective is protective of wildlife if the objective is measured in trophic level 4 fish. The data in Appendix K does not support this conclusion for trophic level 3 fish. Appendix K explains that, “The methylmercury concentration in the fish flesh will depend on the position of the fish on the food web; organisms higher on the food web accumulate more methylmercury.” Section 6.8 of the Staff Report states that, “the 0.2 mg/kg objective in trophic level 4 fish should reasonably protect most threatened endangered species and piscivorous wildlife, with the exception of the California least tern.” No data was available to show that the Sport Fish Water Quality Objective in trophic level 3 fish would also be protective of wildlife and the data suggested that an objective of 0.2 mg/kg methylmercury concentration in fish tissue for trophic level 3 fish between 150 to 500 millimeters total length may not be protective of wildlife a separate Prey Fish Water Quality Objective was included to insure the protection of wildlife.</p>			
Letter: MerclD1, Pg6, P3	COMMENT	Excerpt: 48	Type: Objectives not protective
<p>The Draft Staff Report states that it is not clear whether a 0.2 mg/kg Sport Fish objective would be protective of wildlife that eats lower trophic level fish. (Draft Staff Report, pp. 125-127.) Expressly acknowledging the uncertainty, the Draft Staff Report states that data is limited. (Id.) It rationalizes that the relationship between mercury concentrations in sport fish and mercury concentration in prey fish is water body specific but does not provide a citation to or explanation of a study supporting this conclusion. (Id.)</p>			
<p>Response: Please see Response to Comment MerclD1- 47, In addition, the staff report does not cite studies showing the relationship in methylmercury concentration between prey fish and larger trophic level 3 fish because no studies related to this relationship were found and staff was unable to derive a conversion using the existing data. Therefore, in Section 6.8.3 of the Staff Report is recommending a Prey Fish Water Quality Objective, specifically for the protection of wildlife, in addition to the Sport Fish Water Quality Objective. Only with separate objectives can we be certain that the objectives are protective of both people and wildlife-consuming fish in trophic level 3 dominated waters. In addition the peer review, Dr. Mark B. Sandheinrich agreed with the approach after a thorough examination of uncertainty factors an alternate reference doses for wildlife. See Staff report Appendix S.2.</p>			
Letter: MerclD1, Pg6, P3	COMMENT	Excerpt: 49	Type: Insufficient Data for Objectives

Section 4.5.4 of the Staff Report provides very limited information regarding existing conditions in the State and does not show specific studies of water bodies where concentrations of mercury in prey fish have resulted in adverse effects on wildlife.			
Response: Section 4.4.5 of the Staff Report provides a summary of the information on mercury levels in small prey fish and their effect on California least tern. A more complete summary of the effects of methylmercury on wildlife is found in Section 4.6 of the Staff Report, which provides a summary of the information found in Appendix J of the Staff Report. Appendix J states, “Overall, there is more evidence of methylmercury toxicity from areas outside of California and in controlled laboratory studies.” However, there are several California studies discussed in Appendix J that demonstrate methylmercury toxicity is occurring in California wildlife. Section J.2.1 discusses several studies in the San Francisco Bay Area that demonstrate adverse effects in wildlife from methylmercury in the fish that they consume. Section J.2.2 discusses studies in California, outside of the San Francisco Bay Area that show adverse effects on wildlife from methylmercury exposure. Section J.2.4 discusses several studies that specifically look at the effects of methylmercury on loons, a species found in California. Section J.3 discusses the effects of methylmercury on mammals and discusses a study on sea lions in the San Francisco Bay. Taken as a whole, there is overwhelming evidence in the Staff Report, and specifically in Appendix J demonstrating where the concentrations of mercury in prey fish have resulted in adverse effects on wildlife.			
Letter: MercID1 , Pg7, P	COMMENT	Excerpt: 50	Type: Insufficient Data for Objectives
Due to the lack of data supporting the establishment of a separate water quality objective for prey fish, in addition to the Sport Fish Objective and the California Least Tern Objective, the water quality objective for Sport Fish should be chosen to protect wildlife (Option 1) with site-specific water quality objective set for protection of wildlife in water bodies in which it can be demonstrated that the 0.2 mg/kg water quality objective is not sufficiently protective of a particular species.			
Response: Please see Responses to Comments MercID1-47, and 48. In addition, Regional Boards are able to do site-specific water quality objectives. A single site-specific objective may be used for both sport fish and wildlife if it can be shown to be protective of both.			
Letter: MercID1 , Pg7, P1	COMMENT	Excerpt: 51	Type: Legacy Mines
9. Legacy/Historic Mining Activities			
Among other sources such as atmospheric deposition, historic gold and mercury mining in California remains a source of mercury to the environment. While active mines and some abandoned mines continue to have responsible parties/mine owners that can be held responsible for the contamination, in other instances historic mining has already widely contaminated the landscape beyond the vicinity of the mine and no originating responsible party can be identified.			
Response: The Staff Report acknowledges the role of legacy mines as a source of mercury in some waters of the state in the Staff Report. However, the Staff Report does not state the legacy mines are a major or significant source of mercury in all waters of the state. In some cases, dischargers can be a significant or the primary source of mercury for a waterbody. The fact that environmental damage from legacy mines caused widespread contamination prior to the establishment of regulatory mechanisms should not absolve the State of California from its responsibility to protect beneficial uses for the people of the state or for the state’s wildlife. Furthermore, the fact that there is legacy pollution does not absolve individual permitted and regulated entities from complying with objectives and existing regulatory programs that, when			

successful, protect human health and wildlife.			
Letter: MercID1, Pg7, P1	COMMENT	Excerpt: 52	Type: Economics
The costs of dealing with the repercussions of such landscape level mercury contamination from historic gold and mercury mining in California, which cannot be attributed to parties responsible for the mining activities or mine owners, should be borne equally by the citizens of California and not allocated to downstream users of water.			
Response: At present, costs of legacy mining are borne indirectly by downstream users of water, in terms of negative effects to human health and wildlife health due to methylmercury accumulation in fish, but only where legacy mining is a source of mercury. The impacts and concentrations of mercury in landscapes due to legacy mining vary depending where the downstream users are within the state. Again, the fact that there is legacy pollution present in many of California’s waterbodies does not absolve individual permitted and regulated entities from complying with water quality objectives and existing regulatory programs that, when successful, protect human health and wildlife.			
Letter: MercID1, Pg7, P2	NOT COMMENT	Excerpt: 53	Type: Reservoirs
10. Program Implementation Excludes Reservoirs and Reservoir Management Actions			
The Provisions contain a program of implementation to control mercury inputs to water bodies through NPDES permits issued pursuant to Section 402 of the Clean Water Act, water quality certifications pursuant to section 401 of the Clean Water Act, and waivers of waste discharge requirement, where any of the five mercury water quality objectives apply. The focus of the Provisions is on dischargers of mercury into water bodies, including potentially discharges <i>into</i> reservoirs (section 6.13.3). Such “dischargers” discussed and analyzed in the Draft Staff Report and SED include mines, dredging activities, wetlands, municipal and industrial stormwater, wastewater treatment plants and non-point sources. (See Draft Staff Report Section 7.2.)			
Response: Comment noted.			
Letter: MercID1, Pg7, P2	COMMENT	Excerpt: 54	Type: Reservoirs
While discharges from the establishment or restoration of wetlands, and associated water management activities, appear to fall within the Provisions’ program of implementation (See Draft Staff Report, Section 7.2.4.), the Provisions expressly do not establish a program of implementation of water quality objectives for beneficial uses (COMM, WILD, RARE) designated for California reservoirs.			
Response: The provisions provide a program of implementation for dischargers into reservoirs. There are no specific actions required of owners or operators of reservoirs contained within the provisions.			
Letter: MercID1, Pg7, P2	NOT COMMENT	Excerpt: 55	Type: CEQA
It is our understanding that this is the purview of the separate and distinct statewide mercury control program for reservoirs, which will contain its own environmental review process. (See Draft Staff Report, Section 1.6.) As such, the SED for the Provisions does not analyze or support the implementation of water quality objectives in California reservoirs through any of the legal mechanisms listed above, including Section 401 certifications. (See Draft Staff Report, Section 1.6.)			

Response: Please see Response to Comment ACWA_CWA-180.			
Letter: Merced1 , Pg8, P1	NOT COMMENT	Excerpt: 56	Type: Greet/Ending
MID appreciates the opportunity to provide comments to the Provisions and intends to continue participating in this ongoing proceeding as well as the ongoing statewide mercury control program for reservoirs.			
Response: Comment noted.			
Letter: Merced1 , Pg10, P1	NOT COMMENT	Excerpt: 57	Type: Greet/Ending
Exhibit A: Email to Esther Tracy, Office of Public Participation Re “Comments of the Merced Irrigation District to Proposed Beneficial Use Categories Pertaining to Tribal Traditional and Cultural Practices, Tribal Subsistence Fishing and Subsistence Fishing by Other Cultures and Individuals”			
The Merced Irrigation District (“MID”) appreciates the opportunity to provide you with our initial comments to the proposed beneficial use categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing and subsistence fishing by other cultures and individuals currently in development by State Water Board staff. MID participated in the stakeholder meeting on June 15, 2016 for ACWA and Water Agencies. At this meeting, participants were provided with draft language for the three new proposed beneficial uses.			
Response: Comment noted.			
Letter: Merced1 , Pg10, P2	COMMENT	Excerpt: 58	Type: Insufficient Public Review
General Comments			
The stated purpose of the stakeholder meetings is to receive input on the development of the proposed new beneficial uses prior to reporting to the Water Board in September 2016. Until June 15, 2016, however, the process of developing the proposed beneficial uses has been undertaken by Water Board staff, certain Native American Tribes and non-governmental organizations. According to the draft Stakeholder Outreach Document dated June 2016 and other documents, this process has been ongoing since 2013. The adoption of new beneficial uses has the potential to impact water supplies and operations on which millions of Californians rely, for example through the 401 water quality certification process. Water agencies/water users should have been provided an opportunity earlier to participate in the development process to investigate and address the need for these additional beneficial use categories and the potential impacts on water supplies and operations.			
Response: We look forward to continuing to work with your agency and others in future stakeholder outreach efforts. The Water Board did extensive outreach including multiple focused stakeholder meetings with parties (see Staff Report Chapter 2). The three beneficial use definitions were discussed as part of the 2014 outreach, which discussed all aspects of the provisions. However, at that time Board staff had not developed draft language, so the discussion focused more on the concept of the proposed beneficial use definitions. Merced Irrigation District and others were asked to provide feedback in 2016 as part of a “targeted outreach” prior to the public release of the document. In addition, the Water Board held two public meetings during the development of the beneficial use definitions to solicit input. A resolution was duly notice for the February 16, 2016 Board Meeting soliciting language suggestions and directing staff to do additional outreach. Outreach was conducted between May 5 and July 27, 2016, which included outreach to Water Agencies (See Table 2-2). In addition staff held two public workshops after			

<p>the release of the Provisions (January 9 2017 & February 1, 2017) to present the Provisions and answer questions related to the provisions. The second workshop, on February 1, 2017 was noticed as focusing on the interaction between flow, water supply and the potential designation of Beneficial uses “Staff is continuing that workshop to discuss potential instream flow or water supply implications that could be associated with the designation of the proposed beneficial uses, including the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. At the staff workshop, staff will present information focusing on the interplay between the proposed beneficial uses and potential instream flow requirements, and the process by which protection of such uses would occur.”</p> <p>http://www.waterboards.ca.gov/water_issues/programs/mercury/</p>			
Letter: MerCID1, Pg11, P1	COMMENT	Excerpt: 59	Type: Insufficient Public Review
<p>Going forward, impacts to water users from the three proposed beneficial uses should be studied and understood prior to the release of a draft amendment for public comment, currently scheduled for Fall 2016. This process could involve a series of workshops to allow for further discussions with all stakeholders to determine whether these additional beneficial uses are needed, the intended interpretation and application of the beneficial uses proposed by the State Water Board staff, and the potential impacts on water users.</p>			
<p>Response: Comment noted. State Water Board staff did conduct additional outreach and hold multiple staff workshops. Please see table 2-2 in section 2.6.5 of the Staff Report for additional details. Also, please see Response to Comment MerCID1-58.</p>			
Letter: MerCID1, Pg11, P2	COMMENT	Excerpt: 60	Type: Insufficient Public Review
<p>However, no information put forward by the Water Board staff to date demonstrates that statewide establishment of these proposed beneficial uses is even necessary. Instead, where appropriate, such beneficial uses can be defined by the Regional Water Quality Control Boards if needed in their respective region. This apparently already is the case in Region 1 where the applicable water quality control plan includes a Native American Culture beneficial use and a Subsistence Fishing beneficial use.</p>			
<p>Response: Please see Responses to Comments MerCID1-19, 24, 33, and 34.</p>			
Letter: MerCID1, Pg11, P3	COMMENT	Excerpt: 61	Type: Beneficial Uses
<p>During the stakeholder meeting on June 15, 2016 and in associated circulated documents, Water Board staff emphasized that none of the three proposed beneficial uses were intended to protect beneficial uses currently protected by other uses, such as cold freshwater habitat. Instead, according to Water Board staff, the proposed Tribal Subsistence Fishing and Subsistence Fishing beneficial uses are intended to apply solely to safe levels of consumption. For example, a beneficial use for Tribal Subsistence Fishing would not be intended to protect the presence or abundance of fish species. It was less clear, in discussions with Water Board staff, how to distinguish the intended protections of the proposed Tribal Traditional & Cultural Use beneficial use from existing beneficial uses. If the process moves forward, all three proposed beneficial uses should include language that makes clear their intended scope of protection as distinguished from the protections of current beneficial uses.</p>			
<p>Response: Please see Appendix T, question 4. The following language was added to the Provisions in the introduction to the beneficial uses: “The function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to, Aquaculture, Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish”</p>			

Letter: MerchID1, Pg11, P4	COMMENT	Excerpt: 62	Type: Beneficial Uses
Additional Specific Comments			
Tribal Traditional & Cultural Use The current proposed language for Tribal Traditional & Cultural Use is ambiguous and open-ended in what practices constitute traditional and cultural uses to be protected by the proposed beneficial use, raising the potential for inconsistent interpretations and application.			
Response: Comment noted, Please see Response to comment MerchID1-61 as well as appendix T, question 11.			
Letter: MerchID1, Pg11, P4	COMMENT	Excerpt: 63	Type: Beneficial Uses
In particular the undefined and unfamiliar term “lifeways” is incomprehensible. Because the proposed language is open-ended and largely undefined, it is impossible to assess in advance the potential application of this proposed beneficial use to a particular water body, to determine any overlap with existing, beneficial uses or to determine the potential impacts to water users.			
Response: This comment is addressed by Appendix T question 7. Additionally, a definition for the term “lifeways” has been added to the glossary for the Provisions.			
Letter: MerchID1, Pg11, P4	COMMENT	Excerpt: 64	Type: Beneficial Uses
Under the current proposed wording, it is conceivable that existing beneficial uses adequately protect all of the traditional and cultural uses sought to be protected. Any beneficial use for Tribal Traditional & Cultural Use should be more precisely worded so as to clearly define the practices protected, and, where needed, terms should be defined.			
Response: If the proposed beneficial use is covered by existing use or existing water quality objectives, those objectives may be applied to protect the use. Evidence pertaining to the adequate protection of a beneficial use will be presented and analyzed as part of the public participation process. Because designation will be conducted on a specific, case-by-case, we do not recommend the State Water Board change the definitions. In addition, the staff report in Chapter 3 discusses the necessity for the Beneficial Use Definitions and Chapter 4.10 describes “Uses of Water by California Native American Tribe.” The actual uses for a given water body would be part of any process for designation of uses.			
Letter: MerchID1, Pg11, P5	COMMENT	Excerpt: 65	Type: Beneficial Uses
Further, it is unclear how such an open-ended Tribal Traditional & Cultural beneficial use will be applied (designated) by the Regional Boards. The Water Board staff provided little information on the type of evidence it envisions would be required to establish a tribal traditional and cultural use, aside from saying that it would apply only to federal and state-recognized tribes and evidence would be required.			
Response: Please see Response to Comment MerchID1-41.			
Letter: MerchID1, Pg11, P	COMMENT	Excerpt: 66	Type: Beneficial Uses
Other questions that remain include, but are not limited to, how longstanding, established or frequent would the use have to be, how many members of the tribe would need to be engaging in the use, and would the use have to originate from a treaty right.			

Response: This comment is addressed by Appendix T, question 14 and 15. Please see Responses to WSPA2-38, CVCWA1-36, 38, 40 and MerclD1-38.			
Letter: MerclD1, Pg12, P1	COMMENT	Excerpt: 67	Type: Beneficial Uses
Tribal Subsistence Fishing			
As noted above, the proposed beneficial use for Tribal Subsistence Fishing fails to make clear that the intended “protection” is geared towards consumption levels and not abundance of aquatic species or habitat, which are protected by currently existing beneficial uses. The proposed wording should be revised to make clear that this proposed beneficial use is intended narrowly to protect human health related to consumption levels. Other issues of concern include the evidence required to establish a “tribal subsistence fishing” use.			
Response: Please see Response to MerclD-61. In addition, Appendix A of the Staff Report specifically addresses this concern and states, “The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses relate to the risks to human health from the consumption of noncommercial fish or shellfish. The two subsistence fishing beneficial uses assume a higher rate of consumption of fish or shellfish than that protected under the Commercial and Sport Fishing and the Tribal Tradition and Culture beneficial uses. The function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to, Aquaculture, Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.”			
Letter: MerclD1, Pg12, P2	COMMENT	Excerpt: 68	Type: Beneficial Uses
Subsistence Fishing			
At the June 15, 2016 meeting, Water Board staff provided no substantive information regarding levels of subsistence fishing (as distinct from Native American tribal subsistence fishing) in California water bodies. There is no indication that such a beneficial use is needed, in particular to be defined on a statewide basis as opposed to a regional basis.			
Response: Staff Report section 3.1 outlines the need of these beneficial uses and provides background on the State Water Board’s position on these issues. The Staff Report states, “Communication between the State Water Board and several California tribes began in 2013. The Chair of the State Water Board wrote to a tribal ad hoc group in October 2013 and acknowledged ‘the importance of identifying and describing beneficial uses unique to California tribes, in addition to subsistence fishing by other cultures or individuals.’ State Water Board staff corresponded and engaged with tribal representatives during 2014 and 2015, as well as with environmental justice representatives, to receive their input concerning matters uniquely within their knowledge, tradition, and practices. During spring 2015, eight tribes submitted resolutions from their respective tribes to the State Water Board that proposed specific language for two beneficial uses pertaining to tribal traditional and cultural use and tribal subsistence fishing. On February 16, 2016, the State Water Board adopted Resolution No. 2016-0011, which directed staff to develop proposed beneficial uses, including definitions ‘pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.’”			
Letter: MerclD1, Pg12, P3	COMMENT	Excerpt: 69	Type: Beneficial Uses

Further, the proposed beneficial use for Subsistence Fishing is worded so broadly that it is unclear whether one individual subsistence fishing in a water body, for cultural or economic reasons, is intended to trigger the designation of this beneficial use.			
Response: Please see Responses to Comments MerCID1-42, and MerCID1-43.			
Letter: MerCID1, Pg12, P3	COMMENT	Excerpt: 70	Type: Beneficial Uses
It is also unclear from the wording how broadly “cultural traditions” is intended to be defined or what level of economic resources constitutes a “lack of personal economic resources.” Considering these ambiguities, the impacts to water supplies and operations state-wide could potentially be immense. The proposed wording should be revised to make clear what constitutes a “cultural use” or “lack of personal economic resources” and what level of subsistence fishing warrants protection as a subsistence fishery? As noted above, the wording should also be revised to make clear that this proposed beneficial use is intended narrowly to protect human health related to consumption levels.			
Response: Please see Response to Comment MerCID1-67. Additionally, if the commenter has specific changes to the language to recommend, we will consider those changes accordingly.			
Letter: MerCID1, Pg12, P4	NOT COMMENT	Excerpt: 71	Type: Greet/Ending
MID appreciates the opportunity to provide these comments and intends to continue participating as a stakeholder in the development process.			
Response: Comment noted.			

CASQA2

Author: Jill Bicknell **Title:** Chair **Organization(s):** California Stormwater Quality Association

Address: P.O, Box 2105, Menlo Park CA 94026 **Interest Group:** STORM

Date: 2/17/2017

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Letter: CASQA2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the California Stormwater Quality Association (CASQA), thank you for the opportunity to provide comments on Proposed 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 Mercury Provisions, which was distributed for public review on January 4, 2017 (referred to hereinafter as the “Draft Beneficial Uses and Mercury Objectives” or “Draft Staff Report”).			
Response: Comment noted.			
Letter: CASQA2 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Description
CASQA understands that the State Water Resources Control Board (State Water Board) is proposing to establish (a) three new beneficial use definitions pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use; (b) one narrative and four numeric mercury water quality objectives to protect numerous beneficial uses of water involving human health and aquatic dependent wildlife; and (c) a program of implementation to control mercury discharges. In addition, the State Water Board is proposing to align the adoption of these items with the timeline stipulated within the U.S. EPA Consent Decree (1) so that U.S. EPA’s obligation to establish the mercury water quality criteria for aquatic life and aquatic-dependent wildlife would also be satisfied.			
Footnote 1: <i>Our Children’s Earth Foundation and Ecological Rights Foundation vs. U.S. EPA</i> , No. 3:13-cv-2857-JSW (2014)			
Response: Comment Noted.			
Letter: CASQA2 , Pg1, P3	COMMENT	Excerpt: 3	Type: Beneficial Uses
At the February 7, 2017 State Water Board Hearing on this matter, several speakers testified that the proposed beneficial uses already exist and have existed for a long time (e.g., centuries, millennia) – long before California’s water pollution control laws were enacted and the first legally recognized beneficial uses were established by regulation. CASQA understands the proposed beneficial uses at issue here pre-date California’s water quality regulatory system. Unfortunately to-date, the proposed beneficial uses have not been legally recognized as existing and established in accordance with that system. Given that this is the current regulatory status, it is incumbent upon the State Water Board and			

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Regional Water Boards to follow all of the regulations and administrative procedures to consider establishing what would officially be new, legally recognizable beneficial uses.			
Response: Comment noted. We have followed the required procedures in developing these Beneficial Uses. Furthermore, these beneficial uses are not being designated to any specific water bodies. Designation of a water body will include a public participation process.			
Letter: CASQA2 , Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Summary
We provide comments herein to address issues of particular concern for CASQA members, which focus on the process and timeline for adoption of the Draft Beneficial Uses and Mercury Objectives, the proposed beneficial use definitions, full consideration regarding the attainability of the water quality objectives, and required implementation actions that are commensurate with the significance of the stormwater discharges.			
Response: Comment noted.			
Letter: CASQA2 , Pg2, P1	COMMENT	Excerpt: 5	Type: Insufficient public review
Issue #1 – Process and Timeline for Adoption of the Draft Beneficial Uses and Mercury Objectives			
I. The State Water Resources Control Board should modify the process and extend the timeline for the adoption of the proposed beneficial uses, water quality objectives, and program of implementation.			
CASQA understands that the State Water Board intends to adopt the Beneficial Use definitions and Mercury Objectives prior to June 30, 2017 to, in part, assist U.S. EPA in complying with a Consent Decree. While we support the State Water Board’s effort to promulgate such water quality objectives for California rather than relying on the U.S. EPA to do so, attempting to meet the U.S. EPA driven June 30, 2017 deadline will, unfortunately, curtail a robust public review process for this rulemaking that will greatly impact permittees of all types, including municipal and industrial stormwater permittees. In fact, it is unclear if, to date, there has been outreach and feedback from a broad representation of industrial stormwater permittees, including those who participate in the CASQA Industrial Subcommittee.			
Response: Please see Response to Comment WSPA 2-2. Representatives of CASQA were invited to attend the outreach meetings held in 2014 and 2016. Please see Response to Comment CASQA2-6.			
Letter: CASQA2 , Pg2, P3	COMMENT	Excerpt: 6	Type: Insufficient Public Review
Further, in addition to the adoption of mercury objectives for aquatic life and aquatic-dependent wildlife, which in itself satisfies the Consent Decree as it applies to mercury, the proposed action proposes new tribal and subsistence fishing beneficial uses, raising much larger and broader concerns, which simply cannot be fully addressed within the context of a public hearing approximately 30 days after being distributed.			
Response: The Board discussed the proposed definitions for the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial use definitions during two public meetings at the February 16, 2016 Board meeting and the September 20, 2016 Board meeting. Board staff also held a series of outreach meetings with various interested parties. Staff solicited input and encouraged written suggestions for changes to the definitions during the outreach meetings. These are discussed in Chapter 2.6.5 and listed in Table 2-2 of the Staff Report. The definitions included in the Provisions are not significantly different than the definitions presented during the September 20, 2016 Board			

meeting, which was held over four months before the Hearing on February 7, 2017.			
Letter: CASQA2 , Pg2, P4-8	COMMENT	Excerpt: 7	Type: Request: More Time/Split Project
<p>Considering the broad scope of the action proposed (over 700 pages of information and technical analyses), including the adoption of multiple mercury numeric and narrative water quality objectives, the creation of new beneficial uses, the interplay with in-stream flow requirements (which was the subject of a February 1st workshop), and the actions within the implementation plan, CASQA is reiterating its request for either:</p> <p>Option 1. An extension of time for the U.S. EPA Consent Decree and additional steps to the public process for this rulemaking (2); or</p> <p>Option 2. Bifurcate the U.S. EPA obligation to develop water quality criteria for wildlife (the proposed prey fish and California least tern prey fish objectives) by June 30, 2017 from the remaining portion of the proposal and add additional time and steps to the public process for the remaining portions of this rulemaking.</p> <p>CASQA understands that a revised timeline can be accommodated under the terms of the Consent Decree in that the State Water Board can work with U.S. EPA to obtain an automatic extension of the Consent Decree. To the extent that U.S. EPA does not obtain the automatic extension (Option 1 is rejected), Option 2 would still allow the State Water Board to adopt objectives consistent with the terms of the Consent Decree while allowing appropriate time and consideration for the development of water quality objectives, beneficial use definitions, and a program of implementation that are not part of the terms of U.S EPA’s Consent Decree.</p> <p>CASQA Recommendation: <i>Pursue Option 1 or 2 above and revise the schedule as follows:</i></p> <ul style="list-style-type: none"> ○ <i>Extend the public comment period by 60 additional days to about mid-April 2017;</i> ○ <i>Postpone the State Water Board’s first hearing on this issue until May 2017;</i> ○ <i>Provide additional opportunity for the submission of written public comments on any revisions; and</i> ○ <i>Hold a final hearing for consideration of adoption in fall 2017.</i> <p>Footnote 2: Original letter sent to State Water Resources Control Board January 25, 2017; Comment letter – Beneficial Uses and Mercury Objectives: Request for Extension of Time.</p>			
Response: Please see Responses to WSPA 2-2, 3, and ACWA1- 19.			
Letter: CASQA2 , Pg3, P1	COMMENT	Excerpt: 8	Type: Request More time
Issue #2 – Proposed Beneficial Use Definitions			
New beneficial uses should only be established after sufficient time has been provided for constructive conversation and careful consideration by all stakeholders that may be impacted. Although State Water Board staff has provided outreach and have met with various stakeholder			

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groups regarding the content of the definitions, CASQA believes additional time should be provided to all stakeholders on how the beneficial uses will be applied and used by the Regional Water Boards.			
Response: Please see responses to CASQA2-6, and 7. We conducted extensive outreach prior to the public release of the Staff Report. Please see Staff Report section 2.6.4 for additionally information. At this time, we are not recommending a request for more time. At the February 7, 2017 meeting, the State Water Board concurred with staff that no extension to the comment period would be granted. Additionally, designation of a water body will include a public participation process where additional time and opportunity to comment will be granted.			
Letter: CASQA2 , Pg3, P1	COMMENT	Excerpt: 9	Type: No Guidance
Further, CASQA is concerned that staffs' recommended action would result in inconsistent application of the beneficial uses by the various Regional Water Boards. Specifically, the Draft Staff Report recommends that the three newly proposed beneficial use definitions be established, and that the Regional Water Boards then designate specific waterbodies within their respective regions. However, the proposed language for the ISWP contains no direction or guidance to the Regional Water Boards as to how they should determine applicability of the newly proposed beneficial uses.			
Response: Please see Responses to Comments CVCWA-36, and WSPA2-8 and references contained therein.			
Letter: CASQA2 , Pg3, P1	NOT COMMENT	Excerpt: 10	Type: Summary
CASQA's specific concerns and recommendations are provided herein.			
Response: Comment noted.			
Letter: CASQA2 , Pg3, P2	COMMENT	Excerpt: 11	Type: Statement of Necessity
I. Statement of necessity for newly proposed beneficial uses fails to actually provide adequate data and information to support the necessity for the proposed beneficial uses.			
<p>Page 24, [sic] the Draft Staff Report contains a statement of necessity to support the need for adoption of the newly proposed beneficial uses. However, this statement is brief, and relies primarily on State Water Board Resolution No. 2016-0011. The Draft Staff Report does not provide data and information regarding the necessity for adopting the newly proposed beneficial uses. Moreover, it appears that initial discussion regarding the need for these uses was directly tied to the development of mercury objectives, and little consideration has been given as to how or why they would apply beyond the constituent of mercury.</p> <p style="text-align: center;">CASQA Recommendation: <i>Revise the Draft Staff Report to provide additional data and information that clearly supports the need for the proposed beneficial uses beyond their relationship to the proposed mercury objectives.</i></p>			
Response: Section 2.3.1 and section 3.1 of the Staff Report adequately address the need for these uses. See also Staff Report 4.10 ("Uses of Water by California Native American Tribes) and State Water Board Resolution No. 2016-0011. Regarding the application of these uses to other constituents beyond mercury, the designation of these uses to any water body will require a public participation process. Please see Response			

to Comment CVCWA1-36. It is also possible that existing water quality objectives may be applied to protect these uses if they are designated by a Regional Water Board.			
Letter: CASQA2, Pg3, P4	COMMENT	Excerpt: 12	Type: Beneficial Uses
<p>II. There are no limitations to application of the newly proposed beneficial uses, which could impact water rights, flows, and many other factors.</p> <p>Beneficial uses are the underpinning of water quality based regulations and drive permit provisions, enforcement actions, and many other decisions of the Regional Water Boards as well as the State Water Board. Once established and applied to a specific waterbody (regardless if the use is existing or designated), beneficial uses must be protected, maintained, or attained where attainment does not currently occur. The proposed amendments to the ISWP and the Draft Staff Report provide no limitations as to how and when the proposed uses should be applied. For example, the Tribal Tradition and Culture Use (CUL) are “uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.” Considering that many of California’s waterbodies have been highly modified over the years, CASQA struggles to see how this beneficial use could be protected, maintained, or attained in many circumstances.</p> <p>Further, the proposed ISWP language and the Draft Staff Report fail to discuss considerations of seasonality, realistic expectations for attainment of the uses, and other uses of the water. Porter-Cologne mandates that Regional Water Boards and the State Water Board regulate water quality to the highest level, considering all the demands made on the water. (Water Code § 13000.) Accordingly, it is important that the proposed ISWP language and the Draft Staff Report direct the Regional Water Boards to consider multiple factors when making decisions regarding designation of such uses. The ISWP and the Draft Staff Report require that a California Native American Tribe must confirm that the designation is appropriate. While this is an important step, it should not be the only requirement for determining if such designations are appropriate.</p> <p>CASQA Recommendation: <i>The proposed ISWP language and the Draft Staff Report need to be revised to identify various considerations that Regional Water Boards and the State Water Board need to consider prior to designating a waterbody with any of the newly proposed beneficial use designations.</i></p> <p>Response: The appropriate protection of a beneficial use and considerations of seasonality would be analyzed as part of the designation process by the regional board. This process also involves ample public participation. Regarding guidance for Regional Water Boards on designation, please see Responses to Comments WSPA2-13 and CVCWA1-36 and Staff Report Sections 6.4.2 and 6.4.3.</p>			
Letter: CASQA2, Pg4, P3	COMMENT	Excerpt: 13	Type: UAA
<p>III. The Draft Staff Report fails to identify the need for Use Attainability Analysis prior to designation by Regional Water Boards, or provide Regional Water Boards with direction for application of the newly proposed beneficial uses.</p>			

Federal regulations require a state to conduct a use attainability analysis as described in 40 C.F.R., 131.10(g) when a state designates uses that do not include the uses specified in section 101(a)(2) of the Clean Water Act (CWA). The uses in section 101(a)(2) are for the protection and propagation of fish, shellfish and wildlife, and provide for recreation in and on the waters. These uses are often referred to as the fishable-swimmable uses. As described in the Draft Staff Report, the proposed beneficial uses are not fishable-swimmable uses, and thus any designation of such uses must only occur after the Regional Water Board has conducted a use attainability analysis pursuant to 40 C.F.R., 131.10(g). In other words, before designating these uses, the Regional Water Boards and/or the State Water Board should ensure that the uses are in fact attainable, considering the factors specified in 131.10(g).

Requiring a use attainability analysis prior to use designation, which is required by federal regulations, is in direct contrast to the direction provided by the Draft Staff Report. The Draft Staff Report states that “there is no required or threshold of use that the Water Boards must consider when determining beneficial use designations.” (Draft Staff Report, p. 111.) Moreover, the Draft Staff Report claims as follows “..., beneficial uses may be designated as a goal use (or probable future use in Porter-Cologne parlance) where neither the water quality is currently being attained or the use is actually occurring, but there is evidence to indicate that the use would be a probable future use.” (Draft Staff Report, p. 112.) Not only do these statements conflict with federal regulatory requirements in 40 C.F.R. 131.10(g), but they also provide Regional Water Boards with inappropriate direction to adopt beneficial uses that may not actually exist, or be attainable.

Moreover, the proposed amendments in the ISWP should set forth the minimum data and informational requirements that Regional Water Boards need to consider prior to designating these beneficial uses to waterbodies in their regions. At this time, the proposed amendments are silent on these requirements, and the Draft Staff Report contains limited direction. For the CUL use, the Draft Staff Report merely suggests that the Regional Water Boards and the State Water Board can consider evidence from tribal communities and that they should not rely solely on anecdotal evidence. For the subsistence uses, the Draft Staff Report mentions that evidence could include an angler or community consumption study, and that a peer reviewed study is preferred. However, there are no minimum informational or data standards set for Regional Water Boards and the State Water Board to consider when they actually look to designate a waterbody.

CASQA Recommendation: *The Draft Staff Report needs to be revised to reflect applicable federal regulatory requirements with respect to the designation of the newly proposed beneficial uses. Further, CASQA recommends that minimum informational and data requirements be identified as part of the proposed amendments to specifically guide Regional Water Boards and the State Water Board in making waterbody specific designations for these newly proposed uses.*

Response: Please see Responses to Comments WAPA2-7, CVCWA1-7, and 37.

Letter: **CASQA2**, Pg5, P3

COMMENT

Excerpt: 14

Type: Attainability

IV. Improper application of newly proposed beneficial uses could result in situations where it is impossible for MS4s and other dischargers to meet water quality objectives.

Once a waterbody is designated as having the use, discharge permits must include provisions that ensure that such uses are protected,

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maintained or attained. Moreover, narrative water quality objectives are then interpreted with water quality criteria from multiple academic sources and other sources to protect the beneficial use. These numeric values end up being receiving water limitations and/or total maximum daily wasteload allocations that are practically impossible for stormwater permittees to meet because stormwater permittees have little control over sources of pollutants. CASQA appreciates that where a beneficial use truly exists, it is important to try and protect and maintain water quality for that use. Unfortunately, historical designation of beneficial uses in California has at times resulted in the application of impractical beneficial uses to some waterbodies, followed by the improper application of receiving limitations and/or TMDL wasteload allocations. For example, due to tributary rule applications in the Central Valley, we often see aquatic life beneficial uses applied to agricultural drains that are specifically designed for irrigation return flows. To avoid such unintended consequences, it is imperative that there be specific parameters identified to describe what types of waterbodies are appropriate for designation of these uses.

CASQA Recommendation: *To prevent the application of improper and impractical beneficial use designations, CASQA recommends that the State Water Board work closely with all interested stakeholders to clearly identify site specific factors and/or criteria that should be considered prior to the designation of the newly proposed beneficial uses.*

Response: The Provisions do not require any additional requirements for reasonable potential analysis for storm water dischargers. This issue will be addressed when the Industrial General Permit is updated in 2020.

Letter: **CASQA2**, Pg5, P5

COMMENT

Excerpt: 15

Type: Implementation

Issue #3 – Full Consideration Regarding the Attainability of the Water Quality Objectives

- I. The Draft Staff Report does not adequately consider the California Water Code §13241 and §13050 factors as they relate to attainability of the water quality objectives.

Consistent with California Water Code (Wat. Code) § 13241, when setting the mercury objectives, the State Water Board must consider a number of factors, including the “(c) water quality conditions that could be reasonably attained through coordinated control of all factors affecting water quality.” Wat. Code § 13050 additionally requires that the water quality control plans identify the (1) beneficial uses to be protected; (2) water quality objectives; and (3) a program of implementation needed for achieving water quality objectives [Emphasis added].

Thus, while the State Water Board does not necessarily need to conduct a “cost benefit analysis”, the Draft Staff Report should, at a minimum, identify the requisite program of implementation necessary for achieving the proposed objectives and impacts of the program on factors listed in Water Code Section 13241 so that there is some assurance that the proposed objectives can be reasonably attained.

The Draft Staff Report identifies that the “principal sources of mercury pollution to the waters within California are historic mines and atmospheric deposition³” and that “mercury is also present (but in smaller absolute amounts) in point-source discharges, due to a wide variety of potential industrial, commercial and residential sources”. It also notes that the majority of the established mercury total maximum daily loads (TMDLs) identify the major sources of mercury as historic mines/mining legacy, historic manufacturing/processing, and atmospheric deposition⁴.

The Draft Staff Report⁵ includes a brief analysis regarding the water quality conditions that could reasonably be achieved (Section 10.1.3). The section notes that the major surface water discharge types include the following (along with some challenges in controlling the discharges from each):

- Historic mines – “the legacy of mercury left by historic gold and mercury mining is not easily controlled and may prevent attaining the Mercury Water Quality Objectives for many fish species for the next century in many waters”; “coordinated control of contaminants is extremely challenging”
- Atmospheric deposition – “the Water Boards do not regulate mercury emission to the atmosphere”
- Nonpoint sources (including mercury in soil due to natural geology⁶)
- Wetlands
- Dredging
- Storm water
- Municipal and industrial discharges

The Draft Staff Report concludes “it may take a significant period of time to attain the objectives by implementing the mercury controls in the Provisions and developing and implementing other water quality control programs, such as TMDLs. Additionally, the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective may be very difficult to achieve in most waters as discussed in Section 6.5.”

However, the 13241 analysis does not, given the primary sources of mercury, assess what combination of controls and/or timeframe is necessary in order for the water quality conditions to be achieved (and if they are even achievable in all cases, especially if the sources are not currently regulated by the Water Boards). For example, if there is a limited ability to control the primary sources (sediment associated with historic mines and atmospheric deposition) or there are areas where there are elevated levels of mercury in soils due to natural geology, it is unclear if the proposed objectives can be achieved.

CASQA Recommendation: *The Draft Staff Report must be modified to identify a range of implementation actions (as proposed in Section 2.3.3, Section 7, and Appendix A) and to determine whether they would result in the reasonable attainment of the proposed objectives. Based on the results of the 13241 analysis, the program of implementation should be evaluated to ensure that it is commensurate with the achievability of the objectives and the primary factors that drive that achievability.*

Footnote3: Executive Summary, page xx

Footnote 4: Section 4.4.9 Sources of Mercury Identified in TMDLs

Footnote 5: Section 10.1.3 - Water Quality Conditions that Could Reasonably be Achieved through Coordinated Control of All Factors Affecting Water Quality

Footnote 6: Section 6.1.3 - Sediments from mines and naturally enriched soils are thought to be a major source of mercury in many areas of

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California, page 91.			
Response: Please see Responses to Comments ACWA1-15, 16, and 67.			
Letter: CASQA2 , Pg7, P3	COMMENT	Excerpt: 16	Type: Implementation
<p>II. The Draft Staff Report does not adequately consider the California Water Code §13242 as it relates to the implementation of the water quality objectives.</p> <p>Consistent with Wat. Code § 13242, when setting the mercury objectives, the State Water Board must consider “the program of implementation for achieving water quality objectives” which “shall include, but not be limited to [Emphasis added]:</p> <ul style="list-style-type: none"> a. A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private. b. A time schedule for the actions to be taken. c. A description of surveillance to be undertaken to determine compliance with objectives.” <p>Although the Draft Staff Report discusses the elements of a program of implementation required by Wat Code § 13242⁷, it does not fully address subd. (a)-(c).</p> <p>For the “description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private” the Draft Staff Report simply refers to the program of implementation within Appendix A. However, it does not describe the range of actions (in combination) that would be necessary from the various sources in order to ensure that the objectives are achieved (e.g., can objectives be achieved if the dispersed, broad impacts of historic mining and/or atmospheric deposition cannot be addressed?⁸).</p> <p>For the time schedule, the Draft Staff Report does not recognize the 100+ year timeframe that is expected before the objectives may be achieved. Instead, it references that the time schedule for compliance will be determined on a discharge-by-discharge basis by the Water Boards, pointing to the Water Board’s existing Compliance Schedule Policy (Res. 2008- 0025). In turn, the Compliance Schedule Policy generally requires measures to be scheduled to achieve any final limit based on new water quality objectives, and that terms must be as short as possible, but generally not longer than ten years. It is critical that NPDES permittees not be held to a 5-, 10-, or 15-year timeframe when it is recognized that the objectives will not be attained within that timeframe.</p> <p>Lastly, there is no description within Appendix A regarding the surveillance/monitoring that would need to take place to ensure that the fish tissue objectives within ambient receiving waters are progressing towards or are in attainment.</p> <p>CASQA Recommendation: <i>Based on the results of the 13241 analysis, the program of implementation should be modified to ensure that it is commensurate with the achievability of the objectives and the primary factors that drive that achievability. The program of implementation must account for the controllability of the primary sources, the influence of unregulated sources, the extended timeframes necessary to achieve the objectives, and the compliance requirements for regulated discharges (especially if they are a de</i></p>			

minimis source).

Footnote 7: 7 Section 10.2 – Considerations Required by Water Code Section 13242

Footnote 8: The Draft Staff Report identifies the principal sources of mercury pollution to the waters within California as historic mines and atmospheric deposition, Executive Summary (pg. xxi).

Response: Please see Responses to Comments ACWA1-15, 16, and 67.

Letter: **CASQA2**, Pg8, P3-4, Pg9,
P1

COMMENT

Excerpt: 17

Type: Implementation

Issue #4 – Require Implementation Actions that are Commensurate with the Significance of the Stormwater Discharges

II. The Implementation of Water Quality Objectives (Section IV of Appendix A) should only require the implementation of best management practices (BMPs) when the municipal stormwater discharges are causing or contributing to a persistent exceedance of water quality standards.

The Implementation of Water Quality Objectives (Section IV of Appendix A) includes a de facto requirement that the provisions specified in Section IV.D.3.b be incorporated in municipal stormwater NPDES permits where any of the mercury water quality objectives apply, even if the municipal stormwater permittees are already implementing a wide range of controls that address mercury, have not been found to cause or contribute to persistent exceedances of the objectives, or if there is already a TMDL. However, this is counter to other portions of the Draft Staff Report and is inconsistent with the approach taken for other stormwater permittees such as the California Department of Transportation and enrollees under the Construction General Permit. In fact, with regard to Phase I and Phase II municipal stormwater programs, the Staff Report notes:

- “For many MS4s, permits already contain such control measures and best management practices.”⁹
- “However, many of the existing general requirements in storm water permits can help reduce mercury in storm water. For example, Phase I and II MS4 permits contain requirements for public education outreach, pollution prevention, sediment controls for construction areas, and low impact development; all of these elements can also help reduce mercury in storm water.”¹⁰
- “Phase I and Phase II MS4s are, on the whole, a smaller source of sediments. The sediment and erosion controls in the current MS4s permits would fulfill the requirements for mercury.”¹¹
- “Phase I and II MS4s already have some existing requirements for public education outreach, pollution prevention, sediment controls for construction areas, and low impact development. Additionally, street sweeping is already required by both Phase I and II MS4s. Street sweeping removes fine dust, which may contain mercury from brake pads or atmospheric deposition and keeps improperly discarded mercury containing items from contaminating storm water. If the required actions are already being conducted by an MS4 those activities would count towards compliance.”¹²
- “Therefore, it is anticipated that the reasonably foreseeable methods of compliance are likely already being done by Phase I MS4s and there would be little to no change for Phase I MS4s. Phase II MS4s generally have fewer requirements, so it is estimated that some Phase II MS4s may need to add some of the activities described below.”¹³

Thus, based on the points listed above and the supporting discussion within the Draft Staff Report, it is clear that both the Phase I and Phase II municipal stormwater permits already contain a) robust erosion and sediment controls as a part of the Construction and Land Planning programs; b) public education and outreach programs; c) household hazardous waste programs that accept key mercury containing items/materials; and d) additional requirements where mercury TMDLs have been adopted. As a result, it is unclear why Phase I and Phase II municipal stormwater programs are being held to a different standard than other stormwater dischargers and required to implement the controls listed in IV.D.3.b prior to any assessment as to the sources of identified receiving water impairments.

Footnote 9: Draft Staff Report, Executive Summary, page xxi

Footnote 10: Section 6.11.1, page 136

Footnote 11: Section 6.11.3, page 138

Footnote 12: Section 6.11.3, page 139

Footnote 13: Section 7.2.5, page 171

Response:

- (1) The Statewide Storm Water Permit for the Department of Transportation (Caltrans MS4 Permit) is a Phase I MS4 Permit, which is subject to the same requirements as all other Phase I MS4 Permittees. The Caltrans MS4 Permit will need to include the same requirements after the Mercury Policy is adopted.
- (2) As stated in the Staff Report in the sections cited by the commenter, most of the requirements under the Chapter IV.D.3.b of the Provisions are existing requirements (e.g. public education, thermometer exchange program, etc.) and MS4 Permittees have been implementing these programs for years. Thus, the requirements in Provisions Chapter IV.D.3.b are not extra burden for most of MS4 permittees.
- (3) There are no new requirements proposed for Construction General Permit (CGP) dischargers. If the commenter feels there should be additional requirements for CGP dischargers in order to be consistent then please provide that comment in the future.

Letter: **CASQA2**, Pg9, P2

COMMENT

Excerpt: 18

Type: NPDES MS4

In addition, it is unclear 1) how the linkage between the mercury concentrations in stormwater discharges from urban areas and the definition of Areas with Elevated Mercury Concentrations¹⁴ was established; and 2) what best management practices (BMPs) would be required. Although the Draft Staff Report states that “for areas that are specifically designated as Areas with Elevated Mercury Concentrations, the Water Boards would be required to include best management practices for erosion control in MS4 permits”, the reality is that Phase I and Phase II permits may not cover all of the areas where there are elevated mercury concentrations and that, where there is coverage, the Phase I and Phase II permits already include requirements for erosion and sediment controls as a part of their construction programs. Therefore, it is unclear what additional controls are contemplated.

Footnote 14: AREAS WITH ELEVATED MERCURY CONCENTRATIONS: Areas with elevated mercury concentrations include the following areas:

- 1) Areas located in the Coast Range mountains with naturally mercury-enriched soil or sediments with total mercury concentrations of 1 mg/kg or higher;

Responses to Comments—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 Mercury Provisions.

<p>2) Areas located in an industrial area with soil or sediments with total mercury concentrations of 1 mg/kg or higher;</p> <p>3) Areas located within historic mercury, silver, or gold mine tailings;</p> <p>4) Areas located within historic hydraulic gold mining pits in the Sierra Nevada mountain range.</p> <p>5) Any other area(s) determined by the PERMITTING AUTHORITY in the applicable order.</p>			
<p>Response:</p> <p>(1) The Staff Report section 4 contains extensive discussions on mercury sources and the area adjacent to the mercury sources would be the areas with the elevated mercury concentration.</p> <p>(2) The Provisions requires dischargers to implement erosion control BMPs to prevent soil with elevated mercury concentration from discharging into the receiving water. The PERMITTING AUTHORITY does not specify type of erosion control BMP in permits; the dischargers can select the most effective erosion control BMP.</p> <p>(3) If the area with elevated mercury concentration is outside of the jurisdiction of the permitted municipality, the MS4 permittee does not need to implement erosion control in that area.</p> <p>(4) As stated in the Staff Report, the erosion control BMP requirement is not new, it is an existing requirement. If the MS4 permittee already have effective erosion control BMP in the area with elevated mercury concentration, no action is needed. The requirement in the Provision Chapter IVD.3.b.2) is to ensure that all MS4 permits have the erosion control requirements for the areas with elevated mercury concentration within the jurisdiction of municipality.</p>			
Letter: CASQA2 , Pg10, P1	COMMENT	Excerpt: 19	Type: Proposed Language Change
<p>Since discharges from urban areas are not a primary source of mercury and the municipal stormwater permits already include erosion and sediment controls, it is recommended that this provision be deleted.</p>			
<p>Response: Although the erosion control BMP is an existing requirement, some MS4 permits may not have the requirement of implementing erosion control BMPs in the area with elevated mercury concentration. Thus, it is necessary to keep the requirements in the Provisions Chapter IV.D.3.b.</p>			
Letter: CASQA2 , Pg10, P2	COMMENT	Excerpt: 20	Type: Proposed Language Change
<p>Lastly, Appendix A should be modified to identify a compliance pathway for the discharge prohibitions and receiving water limitations for municipal stormwater permittees who are implementing the mercury pollution prevention and pollution control measures.</p>			
<p>Response:</p> <p>(1) The Provisions do not have discharge prohibitions for phase I and II MS4 permittees;</p> <p>(2) The receiving water limitations apply to municipal (e.g. POTWs) and industrial wastewater discharges, and they are not for storm water discharge.</p>			
Letter: CASQA2 , Pg10, P3	COMMENT	Excerpt: 21	Type: Proposed Language Change
<p>CASQA Recommendation: <i>Modify the language in Appendix A, Section IV.D.3.a as follows:</i></p>			

Chapter IV.D.3 applies to storm water dischargers regulated under general and individual NPDES STORM WATER permits issued pursuant to Clean Water Act section 402, subsection (p) that have been found to cause or contribute to persistent exceedances of water quality standards or when a mercury TMDL is being developed and the municipal stormwater dischargers are a significant source. The PERMITTING AUTHORITY shall ~~consider~~ include the requirements in Chapter IV.D.3.b in individual and general NPDES STORM WATER permits when adopting or re-issuing the permits.

Response: Please see Responses to Comments CASQA2-18, 19, and 20. Furthermore, unlike the discharges from POTWs and other point sources, currently there is no specified method to determine if a municipal storm water discharge is found to cause or contribute to exceedances of water quality standards. Although the storm water discharge is regulated under the point source discharges, the actual nature of storm water discharge is sheet flow; thus, it is very difficult to determine whether a MS4 discharge causes or contributes to persistent exceedances of water quality standards. Adding the recommended sentences will make it difficult to implement the Provisions, Chapter IV.D.3.a requirements.

Letter: CASQA2, Pg10, P4	COMMENT	Excerpt: 22	Type: Proposed Language Change
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Modify the language in Appendix A, Section IV.D.3.b.1) as follows:

Phase I and Phase II MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) permits shall include one or more ~~a combination~~ of the following mercury pollution prevention and pollution control measures to reduce total mercury or methylmercury discharges where the stormwater discharges have been found to cause or contribute to persistent exceedances of water quality standards or when a mercury TMDL is being developed and the municipal stormwater dischargers are a significant source.: ~~All of~~ The following control measures are ~~required, except,~~ at the discretion of the PERMITTING AUTHORITY, additional measure(s) may be substituted for one or more measures if the substituted measure(s) would provide an equivalent level of control or prevent total mercury or methylmercury pollution. If the PERMITTING AUTHORITY substitutes other measures, the justification shall be documented in the permit fact sheet or equivalent document. The effort involved in each of the required measures shall be proportional to the size and population of the MS4.

Response: The purpose of the requirements under Provisions Chapter IV.D.3.b.1) is to enhance the existing public education and outreach program to ensure that mercury containing-products, e.g. fluorescent lamps, be recycled and will not be in contact with the storm water runoff. Adding the suggested changes will make the implementation of these requirements difficult.

Stated in the Staff Report in the sections cited by the commenter, most of the requirements under the Chapter IV.D.3.b of the Provisions are existing requirements (e.g. public education, thermometer exchange program, etc.) and MS4 Permittees have been implementing these programs for years. Thus, the requirements in Provisions Chapter IV.D.3.b are not an extra burden for most of MS4 permittees.

Furthermore, the receiving water limitations in the Provisions apply to municipal (e.g. POTWs) and industrial wastewater discharges (non-storm water discharges), they do not apply to storm water discharge. For storm water discharges, currently, there is no specific method to determine if a storm water discharge is causing or contributing to exceedances of water quality standards..

Letter: CASQA2, Pg10, P5	COMMENT	Excerpt: 23	Type: Proposed Language Change
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<i>Delete the language in Appendix A, Section IV.D.3.b.2 as follows:</i>			
2) The PERMITTING AUTHORITY may include best management practices to control erosion in MS4 permits. However, the MS4 permit shall contain best management practices for AREAS WITH ELEVATED MERCURY CONCENTRATIONS.			
Response: Please see Responses to Comments CASWQA2-18, and, 19.			
Letter: CASQA2 , Pg10, P6	COMMENT	Excerpt: 24	Type: Proposed Language Change
<i>Add the following language in Appendix A, Section IV.D.3.b.2 (new section) as follows:</i>			
<u>2) Compliance Determination. MS4 permittees in full compliance with the implementation of the mercury pollution prevention and pollution control measures are deemed to be in compliance with the mercury discharge prohibition and water quality objectives incorporated into the MS4 permit.</u>			
Response: Please see Responses to Comments CASWQA2-18, and 19.			
Letter: CASQA2 , Pg11, P1	COMMENT	Excerpt: 25	Type: NPDES MS4, IGP/CGP
II. The Implementation of Water Quality Objectives (Section IV of Appendix A) should recognize that there may be some instances where the municipal and/or industrial stormwater discharges are deemed insignificant discharges.			
<p>There may be some instances where the permitting authority determines that the municipal and/or industrial stormwater discharges are an insignificant (de minimis) source of mercury to the receiving water and that the implementation of the mercury pollution prevention and pollution control measures listed in <i>Appendix A, Section IV.D.3.b</i> will not have a measurable effect on fish tissue and should not be required.</p> <p>For example, during the development of the Delta Methylmercury Total Maximum Daily Load (TMDL)¹⁵, it was determined that the urban land use (stormwater permittees) contributes about <u>0.4% of the Delta methylmercury load</u> (see Figure below – NPDES MS4) and municipal and industrial sources (combined) accounted for about <u>4% of the Delta methylmercury load</u> (see Figure below – NPDES Facilities). As such, even if the municipal and industrial stormwater permittees are able to reduce the load to 0, which is very difficult to do due to the limited best management practices that directly affect mercury, the fish tissue objective will not be attained. Thus, the primary controls should address the most significant sources of mercury; tributary inputs, wetlands, and open water.</p> <p>[See Figure on page 11]</p> <p>CASQA Recommendation:</p> <p><i>Modify the language in Appendix A, Section IV.D.3.a as follows:</i></p>			

Chapter IV.D.3 applies to storm water dischargers regulated under general and individual NPDES STORM WATER permits issued pursuant to Clean Water Act section 402, subsection (p) that have been found to cause or contribute to persistent exceedances of water quality standards or when a mercury TMDL is being developed and the municipal stormwater dischargers are a significant source.[sic] The PERMITTING AUTHORITY shall ~~consider~~ include the requirements in Chapter IV.D.3.b in individual and general NPDES STORM WATER permits when adopting or re-issuing the permits.

The PERMITTING AUTHORITY is authorized to exempt certain dischargers from some or all of the provisions of Chapter IV.D.3 if the PERMITTING AUTHORITY makes a finding that the discharge is insignificant (de minimis) with respect to the other identified sources of mercury within the subject watershed.

Footnote 15: Table 6.2 http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/delta_hg/april_2010_hg_tmdl_hearing/apr2010_tmdl_staffrpt_final.pdf

Response: The Delta is a very large water body. The very small MeHg mass loading from the storm water discharges is due to the drought situation, California has not had much rain, and thus the storm water flow is very low in the past few years and resulted in very small mass loading to the Delta water. The mercury could have a large impact if the storm water is discharged to a small and slow flowing stream of receiving water. Furthermore, the Delta already has a MeHg TMDL, thus the Provisions does not apply to Delta (see Provisions Chapter IV.D.1).

Moreover, unlike the discharges from POTWs and other point sources, currently there is no specified method to determine if a municipal storm water discharge is found to cause or contribute to exceedances of water quality standards. Although the storm water discharge is regulated under the point source discharges, the actual nature of storm water discharge is sheet flow; thus, it is very difficult to determine whether a MS4 discharge causes or contributes to persistent exceedances of water quality standards. Adding the recommended sentences will make it difficult to implement the Provisions, Chapter IV.D.3.a requirements.

Letter: CASQA2, Pg12, P3	COMMENT	Excerpt: 26	Type: IGP
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III. The Draft Staff Report does not contain the technical justification or corresponding analysis for the reduction of the industrial stormwater Numeric Action Level (NAL) from 1400 ng/L to 300 ng/L, or clarify how the Water Quality Objectives will affect compliance with receiving water limitations.

The General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit (IGP) – NPDES No. CAS000001) incorporates numeric action levels (NALs) for a number of constituents, including mercury, to help indicate the overall pollutant control performance at any given facility. The IGP contains annual and instantaneous maximum NALs. The annual NALs are uniformly established as the 2008 EPA Multi-Sector General Permit (MSGP) benchmark values, and are applicable for all parameters including total mercury (established as 1400 ng/L). In addition, the Industrial General Permit contains receiving water limitations requiring that dischargers ensure that discharges to not cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water. (IGP Section VI).

Although the Draft Staff Report states “The provisions would not impose any new requirements”, it goes on to state that the previously established NAL would be “updated” (become more stringent) and be reduced from 1400 ng/L to 300 ng/L¹⁶. According to the Draft Staff Report, the rationale for reducing the NAL is that:

- It is “very high compared to water quality based thresholds. The threshold of 1400 ng/L is 28 times higher than the outdated California Toxics Rule criterion (50 ng/L). (The Industrial General Permit is the only storm water permit that includes requirements for mercury monitoring.¹⁷).¹⁸”
- This concentration (300 ng/L) is six times higher than the outdated California Toxics Rule criterion (50 ng/L) and 25-75 times higher than water column targets that are consistent with meeting the objective (4 – 12 ng/L, Appendix I). Yet, the Numeric Action Level of 300 ng/L is about five times more protective than the current Numeric Action Level of 1400 ng/L¹⁹.
- A criterion of 300 ng/L is included in the Provisions because the existing Numeric Action Level (1400 ng/L) is outdated and relatively high. The concentration of 300 ng/L is the lowest the Numeric Action Level could be without changing the analytical method. Requiring the use of the newer, more sensitive mercury analytical method would be much more expensive, and Numeric Action Levels are technology based, not water quality based.²⁰

This rationale inappropriately compares the use of a benchmark to a water quality criterion, which have very different purposes.

Footnote 16: Section 2.3.3 – *Program of Implementation*, page 10

Footnote 17: This statement is not accurate. In fact, many municipal stormwater permits require monitoring program, which include mercury within the suite of constituents.

Footnote 18: Section 6.11.2 – *Issue Description*, page 137

Footnote 19: Section 6.11.3 – *Options*, page 140

Footnote 20: Appendix P, P.2.1 – *The Recommended Criterion for Mercury*, page P-4

Response: The rationale for the 300 ng/L Numeric Action Level (NAL) is simply that this value was based on the Method Quantitation Limit of the most economic and viable method for analysis of mercury in stormwater (See Appendix O). Many of the 2008 MSGP Benchmarks upon which many of the current Industrial General Permit NALs were based were also developed in a similar way (See Federal Register Vol. 60 No.189, Table 5). See Staff Report Section 2.3.3 and 6.11, and Staff Report, Appendix P at P.2 through P.2.3.

Letter: CASQA2, Pg13, P2	COMMENT	Excerpt: 27	Type: Numeric Action Levels
In addition, the Draft Staff Report did not thoroughly analyze the economic impact of the revised NALs, or any implications for receiving water limitations compliance, on the total number of facilities that this may affect. The data analysis consisted of an unknown number of facilities over a limited one year period (2013-2014). Although the conclusion was that “most” discharges were below 200 ng/L, it is unclear how many			

facilities were analyzed and how many would meet the revised NAL. In fact, the detailed data analysis and results do not appear to be included as a part of the staff report. Thus, it is unclear what percentage of facilities statewide could currently comply with the revised NAL.

The economic analysis for industrial stormwater permittees is nonexistent and merely states “However, these control measures may not be sufficient to meet the revised Numeric Action level for mercury and, therefore, those dischargers affected are likely to incur incremental costs in order to come into compliance with the proposed policy. Due to the site-specific nature of these controls, we are unable to develop specific cost estimates associated with the incremental control activities”.^{21,22} Although controls may be implemented differently between sites, the range of available controls is likely limited. The economic analysis should identify the range of potential, additional controls and the number of facilities that may have to implement them in order to understand the magnitude of the economic impact on industrial facilities.

Footnote 21: Appendix R, Executive Summary, page ES-4

Footnote 22: Appendix R, R-40

Response: It is not a requirement to provide an economic analysis for the development of Numeric Action Levels (NALs). None of the other NALs in the current Industrial General Permit have had an economic analysis performed on them. NALs are not Effluent Limits, Water Quality Objectives, or Receiving Water Limits. It is not a permit violation to exceed the NAL. Please see Staff Report Section 2.3.3 and 6.11, and Staff Report, Appendix P at P.2 through P.2.3.

Letter: CASQA2 , Pg13, P4	COMMENT	Excerpt: 28	Type: IGP
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While we understand the intent of the proposed provisions, we are concerned that the approach undermines the overarching construct of the IGP and the use of the USEPA MSGP benchmark values as a generalized tool to gauge pollutant control performance at a facility.

Response: The intent and function of the Numeric Action Levels generally will not change with the adoption of the Provisions. Please see Staff Report Section 2.3.3 and 6.11, and Staff Report, Appendix P at P.2 through P.2.3.

Letter: CASQA2 , Pg13, P4	COMMENT	Excerpt: 29	Type: IGP
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In addition, we are concerned that the impact of the revised NAL and receiving water limitation compliance on industrial facilities has not been adequately assessed.

Response: The Staff Report describes that the proposed NAL will also satisfy the requirement of not causing or contributing to the exceedance of a water quality standard. Please see Staff Report Section 2.3.3 and 6.11, and Staff Report, Appendix P at P.2 through P.2.3.

Letter: CASQA2 , Pg13, P5	COMMENT	Excerpt: 30	Type: IGP
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As a result, CASQA strongly recommends that the IGP benchmarks remain intact until such time as they are modified using a consistent technical approach as a part of the IGP renewal. Instead of modifying the NALs piecemeal, we recommend that the Regional Water Boards consider the significance of the industrial stormwater sources of mercury and the use of TMDL-specific requirements (which may well be more stringent than the USEPA benchmark-based NAL exceedance requirements) during TMDL development. This would ensure that water bodies that are not in attainment are addressed while not arbitrarily modifying the approach within the IGP.

Response: The USEPA Benchmarks, upon which the current NALs are based, were not developed using a consistent technical approach. The

<p>rationale for the 300 ng/L Numeric Action Level (NAL) is simply that this value was based on the Method Quantitation Limit of the most economic and viable method for analysis of mercury in stormwater (See Appendix O). Many of the 2008 MSGP Benchmarks upon which many of the current Industrial General Permit NALs were based were also developed in a similar way (See Federal Register Vol. 60 No.189, Table 5) Please see Staff Report Section 2.3.3 and 6.11, and Staff Report, Appendix P at P.2 through P.2.3.</p>			
Letter: CASQA2 , Pg14, P1	COMMENT	Excerpt: 31	Type: Language Recommendation
<p>CASQA Recommendation:</p> <p><i>Modify the language in Appendix A, Section IV.D.3.c as follows:</i></p> <p>Upon <u>permit</u> reissuance <u>or as a reopener</u>, the State Water Board shall <u>amend</u> revise the existing Numeric Action Level (NAL) for total mercury in the NPDES General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit) <u>including the list of TMDLs in Attachment E and other applicable Permit provisions, in order to incorporate TMDL-specific permit requirements, and appropriate compliance schedules, to address adopted TMDLs. Such TMDL-specific requirements will supercede the existing IGP Numeric Action Level (NAL) from 1400 ng/L to 300 ng/L or lower.</u></p> <p>Response: Thank you for your suggested language however the revisions have not been made to the provisions as they are an unnecessary restatement of existing regulations. TMDL wasteload allocations for specific dischargers must always be considered in developing permit requirements. As noted the time to both update the NAL and to include TMDL requirements is upon reissuance or reopening of the permit.</p>			
Letter: CASQA2 , Pg14, P2	COMMENT	Excerpt: 32	Type: Language Recommendation
<p><i>Add the following language in Appendix A, Section IV.D.3.c.2 (new section) as follows:</i></p> <p><u>2) Compliance Determination. Industrial stormwater dischargers in full compliance with erosion and sediment control BMP requirements and any applicable TMDLspecific requirements in the Industrial General Permit, are deemed to be in compliance with the Industrial General Permit receiving water limitations addressing the Water Quality Objectives adopted herein.</u></p> <p>Response: Thank you for your suggested language.</p>			
Letter: CASQA2 , Pg14, P3-6 to Pg15, P1-3	COMMENT	Excerpt: 33	Type: Implementation
<p>IV. The Implementation of Water Quality Objectives (Section IV of Appendix A) should clarify when the implementation provisions are already addressed by an existing TMDL (such that no additional requirements are necessary).</p> <p>The Implementation of Water Quality Objectives (Appendix A, Section D.1) states [emphasis added]:</p>			

The implementation provisions pertaining to a particular beneficial use do not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established pertaining to the same beneficial use or uses.

However, since the implementation actions listed under Section IV.D.3 as well as those specified in existing TMDLs generally apply under all circumstances (meaning they are not bifurcated based on beneficial uses), it is unclear how this “exception” for existing TMDLs is pragmatically utilized.

For example, the Sacramento-San Joaquin Delta Methylmercury TMDL (Delta Methylmercury TMDL) states that the beneficial uses that are deemed impaired by mercury include MUN, REC-1 (later addressed by COMM), and WILD²³ and that the methylmercury objectives to protect these beneficial uses are:

- 0.08 mg methylmercury/kg – TL3 fish (muscle tissue, wet weight – 150-500 mm)
- 0.24 mg methylmercury/kg – TL4 fish (muscle tissue, wet weight – 150-500 mm)
- 0.03 mg methylmercury/kg – fish (whole fish, wet weight -- <50 mm)

However, the Draft Staff Report identifies a range of additional fish tissue objectives for the same beneficial uses, some of which may be more stringent than those within the Delta Methylmercury TMDL.

- Sport Fish (COMM, WILD)
 - 0.2 mg methylmercury/kg – TL3/TL4 fish (fillet, 150-500 mm)
- Prey Fish (WILD)
 - 0.05 mg methylmercury/kg – TL3 fish (whole fish, 50-150 mm)
- California Least Term Prey Fish (WILD)
 - 0.03 mg methylmercury/kg – TL3/TL4 fish (whole fish, <50 mm)

Therefore, the responsible parties listed within the Delta Methylmercury TMDL may be required to implement additional provisions in order to address the more stringent objectives despite the fact that the objectives pertain to the same beneficial uses, there is already a TMDL that has been adopted to address a mercury impairment, and there are limited BMPs available to address mercury. Since the responsible parties should not have to implement additional requirements until such time as the TMDL is reopened and modified based on an updated analysis, the Draft Staff Report should be modified accordingly.

CASQA Recommendation:

Modify the language in Appendix A, Section IV.D.1 as follows:

The implementation provisions of Chapter IV.D shall be implemented through NPDES permits issued pursuant to section 402 of the Clean Water Act, water quality certifications issued pursuant to Section 401 of the Clean Water Act, waste discharge requirements (WDRs), and waivers of WDRs, where any of the mercury water quality objectives apply. The implementation provisions ~~do not apply pertaining to a particular beneficial use do not apply~~ to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established ~~pertaining to the same beneficial use or uses~~.

Footnote 23: 3 Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary, Table 2-1, page 10,

Response: CASQA is confusing the terms “objectives” and “beneficial uses.” As noted in CASQA’s comment letter, IV. D. 1. of the Mercury Provisions state, “The implementation provisions pertaining to a particular beneficial use do not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established pertaining to the same beneficial use or uses.”

Although the Sacramento-San Joaquin Delta Methylmercury TMDL (Delta Methylmercury TMDL) does not contain the same objectives for each beneficial use as the Mercury Provisions, they do pertain to the same beneficial uses. The Mercury Provisions are very clear that the implementation provisions do not apply to TMDLs with the same beneficial use or uses. Therefore, the implementation provisions will not supersede the Delta Methylmercury TMDL. In addition, Section III. D. 3. of the Mercury Provisions state that, “the Mercury Water Quality Provisions do not supersede any site-specific numeric mercury water quality objectives established in a Basin Plan...” Therefore, it is clear that the Mercury Provisions will not supersede the site-specific water quality objectives developed in the Delta Methylmercury TMDL.

CASQA suggested that the language in Section IV.D.1. be modified to say, “The implementation provisions ~~do not apply pertaining to a particular beneficial use do not apply~~ to dischargers that discharge to receiving waters for which a mercury or methylmercury total maximum daily load (TMDL) is established ~~pertaining to the same beneficial use or uses.~~”

The recommended changes are inappropriate because if a new beneficial use, such as a Subsistence Fishing beneficial use, or a Tribal Subsistence Fishing beneficial use is designated to a water with an existing TMDL then the implementation provisions should apply for that newly designated beneficial use. It is then appropriate for the Permitting Authority to reopen the TMDL to reconsider the implementation provisions of the TMDL to protect the new beneficial use or uses.

Letter: CASQA2, PgX, PY	NOT COMMENT	Excerpt: 34	Type: Greet/Ending
Thank you again for the opportunity to comment on the Draft Staff Report. If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.			
Response: Comment noted.			

RRPomo1			
Author: Mike Schaver Title: Environmental Director Organization(s):			
Address: P.O. Box 4015, 1545 E. Highway 20, Nice, CA 95464		Interest Group: CATribes	
Date: 2/17/2017			
Contact person:		Phone: 70-275-0527	E-mail:

Letter: RRPomo1 , Pg1, P1	COMMENT	Excerpt: 1	Type: Support
On behalf of the Robinson Rancheria of Pomo Indians, I am writing in support of the proposed SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives. The adoption by the SWRCB is the first step in developing management goals and programs that will enable the Tribal Members to safely practice their traditions.			
Response: Thank you for your support.			
Letter: RRPomo1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Summary
As the Environmental Director for a Pomo Tribe, I have had the privilege of participating in what some would describe as the most religiously sacred Pomo ceremonies performed on the shoreline of Clear Lake. As an invited guest of the community, I am cautious not to state more than required to meet my responsibility of protecting the health of the community. I have observed water quality that I would consider hazardous during the fall of the year ceremonies and due to tradition neither the time nor location can be varied. The current beneficial uses do not enable the Tribal Members to practice these cultural uses safely.			
Response: Comment noted.			
Letter: RRPomo1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Support
Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice their culture and eat traditional foods, it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete.			
Response: Comment noted. Thank you for your support.			
Letter: RRPomo1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Greeting/Ending
We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like to conduct consultation on any of the included topics, please contact the Tribe at the below address of number.			
Response: Comment noted.			

KBPomo1**Author:** Reno Keoni Franklin **Title:** Tribal Chairman **Organization(s):** Kashia Band of Pomo Indians of the Stewarts Point Rancheria**Address:** 1420 Guerneville Road, Suite 1, Santa Rosa, CA 95403 **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** **Phone:** 70-591-0583 **E-mail:** tribalofc@stewartspoint.orgLetter: **RRPomo1**, Pg1, P1

NOT COMMENT

Excerpt: 1

Type: Greet/Ending

On behalf of the California Indian Environmental Alliance (CIEA) and Kashia Band of Pomo Indians (Kashia), Kashia thanks you for this opportunity to comment on the **SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives**. For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.

We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.

It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.

The legacy of Mercury in California land and waters is a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their 2 inherent responsibility to protect the environment that sustains their Peoples and all living things. When addressing the toxicity that persists from this era, it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Provisions.

In order to assist in the success of this Plan and efforts that will stem from it, we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions, including the Staff Report and SED and the Provisions within, referred to as the Plan throughout this document:

Response: Thank you for your support. Comment noted.

Letter: RRPomo1 , Pg2, P3	COMMENT	Excerpt: 2	Type: Summary
<p>Continued inclusion of CUL, T-SUB and SUB</p> <p>As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subds. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.</p> <p>Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice their culture and to eat traditional foods, it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete. The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial uses definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.</p> <p>Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely “tribal traditional and cultural uses” and “tribal subsistence fishing” in order that they could be applied statewide. Definition development began with the language first adopted by Region 1, and for four years CIEA worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Plan which unfortunately changed these definitions as follows:</p>			
<p>Response: Comment noted.</p>			
Letter: RRPomo1 , Pg2, P6	COMMENT	Excerpt: 3	Type: BU/Designation
<p>In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm what cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase “as affirmed by California Native American Tribe(s),” was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.</p> <p>In the Plan staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of “minimal,” which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word “fundamental” purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and 			

<p>subsistence fishing be established as beneficial uses</p> <ul style="list-style-type: none"> • That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily. • That the definitions be revised in the following manner in order to return them to their original meaning and intent: <p>Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]</p> <p>Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal [fundamental] needs for sustenance.</p>			
<p>Response: Please see Response to Comment CIEAetAl1-3.</p>			
Letter: RRPomo1 , Pg3, P6	COMMENT	Excerpt: 4	Type: Human Activities
<p>Bioavailability of Mercury</p> <p>We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bioaccumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations. 			
<p>Response: Please see Response to Comment CIEAetAl-4.</p>			
Letter: CIEAetAl1 , Pg4, P2	COMMENT	Excerpt: 5	Type: Beneficial Uses
<p>Current and Future Use of the Beneficial Use Provisions:</p> <p>Page xvii of the Executive Summary states that “the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established.” This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word “is.”</p> <p>Page xviii states that associated mercury WQOs related to subsistence beneficial uses (T-SUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.</p> <p>Recommendations:</p>			

- That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments.
- That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates.
- That this forward thinking sentiment also be extended explicitly in the Plan to the continued application of the Tribal Cultural beneficial use.

Response: Please see Response to Comment CIEAetA11-5.

Letter: **RRPomo1**, Pg4, P5

COMMENT

Excerpt: 6

Type: T-SUB Objective

Strengthening of the T-SUB Water Quality Objectives

This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is “the same as the U.S. EPA nationally recommended subsistence rate.”

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.

Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.

We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California’s beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 85417, November 28, 2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems.

The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported “CA Tribal Fish Consumption Study” (SWRCB- UC Davis, 2016), which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% TL3/30% TL4 mixture, and that all Tribes do not consume the same fish species.

Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available. When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.

We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides an overview of CA Tribal fish consumption patterns, it is not exhaustive. It can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.

We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.

Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows

- That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) based on a fish consumption rate of 175 grams per day, allowing safe consumption of fish at 5-6 meals per week,
- That the Plan affirm that this WQO is a minimum statewide standard,
- That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level
- That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat
- That the Plan include language regarding the applicable state and federal anti-degradation or anti-backsliding provisions
- It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals per week.

Response: Please see Response to Comment CIEAETAI1-6.

Responses to Comments—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 Mercury Provisions.

Letter: RRPomo1 , Pg6, P4	COMMENT	Excerpt: 7	Type: BU/Designation
<p><u>CUL Water Quality Objective Considerations</u></p> <p>We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.</p> <p>Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.</p> <p>Recommendation: 6.6 Issue F. – Yes, Option 3/amended as follows</p> <ul style="list-style-type: none"> • We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses. • That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses. 			
<p>Response: Please see Response to Comment CIEAetA11-7.</p>			
Letter: RRPomo1 , Pg7, P3	COMMENT	Excerpt: 8	Type: Revisit RSC
<p><u>Revisit the RFC</u> [sic]</p> <p>The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).</p> <p>The calculation for the Mercury WQOs to protect human health describes the RSC as follows:</p> <p>RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day.</p> <p>Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?</p> <p>Recommendation:</p>			

<ul style="list-style-type: none"> That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation. 			
Response: Please see Response to Comment CIEAetA11-8.			
Letter: RRPomo1 , Pg8, P1	COMMENT	Excerpt: 9	Type: BU/Designation/Guidance
<u>Evidence in Designating Beneficial Uses</u>			
<p>On Pg. 111 the Plan text states that <i>“The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses.”</i> The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils.</p> <p>We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: <i>“However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition.”</i> There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.</p>			
Recommendation:			
<ul style="list-style-type: none"> That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level. That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use. 			
Response: Please see Response to Comment CIEAetA11-9.			
Letter: RRPomo1 , Pg8, P4	COMMENT	Excerpt: 10	Type: Modify Definition
<u>Expand Examples of Trophic Level 4 Fish</u>			
<p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p>			
Recommendation:			
<ul style="list-style-type: none"> Include sturgeon in the definition section of the Plan text as follows: 			

TROPHIC LEVEL 4 FISH (TL4): Fish that consume TROPHIC LEVEL 3 fish and other aquatic organisms. [Examples of these s]pecies include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C.

Response: Please see Response to Comment CIEAEtA11-10.

Letter: **RRPomo1**, Pg9, P1

COMMENT

Excerpt: 11

Type: Add Text/SB 52

Include information regarding Tribal Consultation

We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that: 9

“Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))”

This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order B10-11.

Recommendation:

That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, “Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes.” Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self-government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern 10 and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52.

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those polies. One example is the policy developed by the Karuk Tribe.

Response: Please see Response to Comment CIEAetA11-11.

Letter: RRPomo1 , Pg10, P5	COMMENT	Excerpt: 12	Type: Minor Revision
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in “Loleta (Eureka).” This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor

Response: Please see Response to Comment CIEAetA11-12.

Letter: RRPomo1 , Pg11, P1	COMMENT	Excerpt: 13	Type: BU/Designation
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Statement of Necessity for Beneficial Uses

In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain “to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.” (Resolve Clause No. 1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, REC1, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:

these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order “to create a consistent set of beneficial uses to be used” (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan...

Response: Please see Response to Comment CIEAETAI1-13.

Letter: **RRPomo1**, Pg11,
P4

COMMENT

Excerpt: 14

Type: Revision

Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus at-risk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

Response: Please see Response to Comment CIEAEtA11-14.

Letter: RRPomo1 , Pg12, P2	NOT COMMENT	Excerpt: 15	Type: Greet/Ending
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Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Comment noted.

PSSEP1

Author: Craig S.J. Johns **Title:** Program Manager **Organization(s):** Partnership for Sound Science in Environmental Policy

Address: 1115 – 11th Street, Suite 100 • Sacramento, CA 95814 **Interest Group:** INDUSTRY

Date: 1/24/2017

Contact person: Craig S.J. Johns **Phone:** 916-498-3326 **E-mail:** cjohns@calrestrats.com

Letter: PSSEP1 , Pg1, P2	COMMENT	Excerpt: 1	Type: Commenter Error
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The Partnership for Sound Science in Environmental Policy (“PSSEP”) received notice of the proposed Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions (Draft Beneficial Uses and Mercury Objectives) dated January 4, 2017.

Responses to Comments—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 Mercury Provisions.

Response: The Draft Staff Report was released and is dated January 3, 2017.			
Letter: PSSEP1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Greet/Ending
PSSEP is an association of municipal, industrial, and trade association entities in California whose members are regulated by the State and Regional Water Boards under their joint, Federal Clean Water Act and Porter-Cologne Water Quality Control Act authorities. As such, PSSEP is very interested in the Draft Beneficial Uses and Mercury Objectives and is currently analyzing the Staff Report and SED, the various appendices, and the proposed regulatory changes, as well as assessing potential impacts on our members' operations.			
Response: Comment noted.			
Letter: PSSEP1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Summary
The January 4 Public Notice indicated that the State Board would consider the Draft Beneficial Uses and Mercury Objectives at a hearing on February 9, and the written public comment period would end on February 17. It is our understanding that staff will present a final, comprehensive proposal to the State Board for final adoption in May, 2017 in order to meet a deadline imposed in a Consent Decree to establish mercury water quality objectives to protect aquatic life and aquatic-dependent wildlife in California.			
Response: Comment noted.			
Letter: PSSEP1, Pg2, P1	NOT COMMENT	Excerpt: 4	Type: Support
At the outset, PSSEP recognizes the importance using State Waters for tribal-cultural practices and for subsistence fishing. We also acknowledge the importance of establishing mercury water quality objectives to protect aquatic life and aquatic-dependent wildlife, and the Board's desire to move expeditiously to comply with the Consent Decree deadline.			
Response: Thank you your statement of support for the goals of the Provisions.			
Letter: PSSEP1, Pg2, P	COMMENT	Excerpt: 5	Type: Split the Project
However, we think these two separate regulatory actions can and should be bifurcated for further development and consideration by the Board. Moreover, we believe bifurcating the regulatory actions would enable the State Board to achieve the May 2017 adoption deadline for the mercury objectives to protect aquatic life and aquatic-dependent wildlife, without the unnecessary complications (and controversy) surrounding some of the proposed mercury water quality objectives associated with new beneficial uses (T-CUL, T-SUB, and SUB).			
Response: Please see Responses to Comments WSPA2-3 and 19.			
Letter: PSSEP1, Pg2, P1	COMMENT	Excerpt: 6	Type: Split the Project
In addition, bifurcating these actions as proposed will provide a better opportunity for developing clear implementation guidance for Regional Boards when determining appropriate control strategies, TMDLs, and permit limits to protect the newly proposed T-CUL, T-SUB and SUB beneficial uses.			
Response: Please see Responses to Comments WSPA2-8 and 19.			
Letter: PSSEP1, Pg2, P2	COMMENT	Excerpt: 7	Type: Economics
The current proposal to move forward on adopting the mercury water quality objectives related to T-SUB and SUB will have substantial environmental and economic impacts throughout California. According to the Staff Report for the Draft Beneficial Uses and Mercury Objectives, Responses to Comments—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 Mercury Provisions.			

between 33-75% of all point source dischargers in California would not be able to meet the mercury water quality objectives, depending on whether the 4 ng/L or 1 ng/L water column concentration effluent limits are imposed. (1)			
Response: Commenter does not state what “environmental” impacts the Provisions would have. Regarding economic impacts of the Mercury Water Quality Objectives, Please see Response to Comments WSPA2-6 and 24.			
Letter: PSSEP1 , Pg2, P4	COMMENT	Excerpt: 8	Type: Economics
(1) We note with concern that the Draft Beneficial Uses and Mercury Objectives presented for public review on January 4th defines the “Project Description” to exclude those waters for which existing mercury TMDLs are being implemented, such as San Francisco Bay. As a result, the proposal does not include more than 62 municipal and industrial dischargers to San Francisco Bay, and thus underestimates the number of municipal and industrial wastewater treatment facilities that will be unable to comply with the SUB, T-CUL, and T-SUB water quality objectives. Furthermore, the Staff Report/SED fails to analyze any potential environmental or economic impacts to those dischargers.			
Response: Commenter’s statement regarding “environmental impacts to dischargers” is not clear, in that dischargers are those being regulated to mitigate their impacts to the environment. However, regarding impacts to the environment due to changes introduced by the Provisions, Chapter 7 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) provides an analysis of the reasonably foreseeable methods of compliance for all dischargers in the state. Chapter 8 provides an analysis of the expected environmental effects, considering all dischargers in the state. An analysis of the environmental impacts to dischargers as a select group is not included or required under CEQA. Appendix N of the Staff Report contains an analysis of the dischargers affected by the project. Appendix R contains an analysis of the anticipated statewide costs of compliance for industrial and municipal dischargers.			
Letter: PSSEP1 , Pg2, P3	COMMENT	Excerpt: 9	Type: Staff Report is Insufficient
There are considerable questions raised and issues to be resolved regarding the proposed mercury water quality objectives for all but aquatic life and aquatic-dependent wildlife protection.			
Response: Commenter does not state what questions or issues are specifically raised.			
Letter: PSSEP1 , Pg2, P3	COMMENT	Excerpt: 10	Type: Inadequate Notice
Similarly, establishing the proposed new beneficial uses will undoubtedly have implications for many other bio-accumulative contaminants (i.e., PCBs, selenium, dioxins/furans, pesticides) that have nothing to do with the mercury objective for aquatic life and aquatic-dependent wildlife protection, and have not been discussed or analyzed in the Draft Beneficial Uses and Mercury Objectives proposal. We think it would be important for the State Board Members to understand the totality of potential impacts associated with establishing the proposed new beneficial uses before moving forward on this element of the proposal.			
Response: Please see Response to Comment WSPA2-20.			
Letter: PSSEP1 , Pg3, P1	COMMENT	Excerpt: 11	Type: Request: More Time
PSSEP believes it would be unwise to fast-track the establishment of the proposed new beneficial uses and the proposed mercury objectives other than the aquatic life and aquatic-dependent wildlife objectives. We believe that proceeding more deliberately on these other, extremely complex proposals, could result in a better product which may be supported by many in the discharger community. PSSEP would gladly participate in a stakeholder working group to provide input in developing implementation guidance for the proposed new beneficial uses, as well			

Responses to Comments—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 Mercury Provisions.

as the remaining mercury water quality objectives.

Response: Regarding the request for additional time to re-develop the beneficial uses and Mercury Water Quality Objectives, please see Response to Comment WSPA2-2. Regarding additional guidance, Please see Response to Comment WSPA2-8.

CASQA1**Author:** Jill Bicknell **Title:** Chair **Organization(s):** California Stormwater Quality Association**Address:** P.O. Box 2105, Menlo Park, CA 94026-21085 **Interest Group:** STORM**Date:** 1/25/2017**Contact person:** Geoff Brosseau **Phone:** 650-365-8620 **E-mail:** info@casqa.org

Letter: CASQA1 , Pg1, P1	COMMENT	Excerpt: 1	Type: Request: More Time
<p>The California Stormwater Quality Association (CASQA) joins with other stakeholders (1) to respectfully request that the State Water Resources Control Board (State Water Board) extend the time for submission of written comments on the Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions (Draft Beneficial Uses and Mercury Objectives). According to the Notice of Opportunity for Public Comment, Staff Workshop, Public Hearing and Notice of Filing, released on January 3, 2017, written comments are due to be submitted by noon on February 17, 2017. Considering the substantial volume of documents released, the technical nature of the information, and the magnitude of potential implementation requirements, a 45-day comment period is not adequate for proper public review and comment.</p> <p>(1) CASQA understands that other stakeholders will also be submitting similar letters requesting an extension of time for public comment, and accordingly, CASQA joins with those stakeholders in making this request.</p> <p>Response: Please see Response to Comment WSPA2-2.</p>			
Letter: CASQA1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Support
<p>CASQA understands that the State Water Board intends to adopt Mercury water quality objectives prior to June 30, 2017 to comply with a Consent Decree in <i>Our Children’s Earth Foundation v. U.S. Environmental Protection Agency</i> (Case No. 3:13-cv-2857-JSW). We support the State Water Board’s effort to promulgate such water quality objectives for California rather than allowing the U.S. EPA to do so.</p> <p>Response: Thank you for your support.</p>			
Letter: CASQA1 , Pg1, P2	COMMENT	Excerpt: 3	Type: Insufficient Public Review
<p>However, attempting to meet the June 30, 2017 deadline will unfortunately curtail a robust public review process for this rulemaking that will greatly impact permittees of all types, including municipal and industrial stormwater permittees.</p> <p>Response: Please see Responses to Comments WSPA2-2 and 18.</p>			

Responses to Comments—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 Mercury Provisions.

Letter: CASQA1, Pg1, P2	COMMENT	Excerpt: 4	Type: Insufficient Public Review
Further, in addition to the adoption of mercury objectives for aquatic life and aquatic-dependent wildlife, which in itself satisfies the Consent Decree as it applies to mercury, the proposed action proposes new tribal and subsistence fishing beneficial uses, raising much larger and broader concerns.			
Response: Comment noted. Commenter does not list specific concerns in this comment.			
Letter: CASQA1, Pg1, P3	COMMENT	Excerpt: 5	Type: Request: More Time
Considering the broad scope of the action proposed, including the adoption of multiple mercury water quality objectives and the creation of new beneficial uses, CASQA joins other stakeholders in requesting an extension of time and additional steps to the public process for this rulemaking. Specifically, CASQA joins the Association of California Water Agencies and others to request extension of the public comment period by 60 additional days to on or about April 17, 2017, and postponement of the State Water Board's first hearing on this issue until May 2017. Then, there should be additional opportunity for the submission of written public comments on any revisions, followed by a final hearing for consideration of adoption in September 2017.			
Response: Please see Responses to Comments WSPA2-2, 3 and ACWA1-19.			
Letter: CASQA1, Pg2, P1	COMMENT	Excerpt: 6	Type: EPA Automatic Extension
CASQA understands that this proposed timeline can be accommodated under the terms of the Consent Decree in that the State Water Board can work with U.S. EPA to obtain an automatic extension of the Consent Decree. To the extent that U.S. EPA does not obtain the automatic extension, this timeline would still allow the State Water Board to develop water quality objectives and beneficial uses that are not part of the Consent Decree, and an associated Program of Implementation for all water quality objectives.			
Response: Please see Response to Comment ACWA1-19.			
Letter: CASQA1, Pg2, P2	NOT COMMENT	Excerpt: 7	Type: Greet/Ending
Please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620 should you have any questions with respect to the above request.			
Response: Comment noted.			

CICWQ1**Author:** Mark Grey **Title:** Ph.D., Technical Director **Organization(s):** Construction Industry Coalition on Water Quality**Address:** 2149 E. Garvey Avenue N., Suite A-11, West Covina, CA 91791 **Interest Group:** CONSTR**Date:** 1/20/2017**Contact person:** Mark Grey **Phone:** 951-781-7310 ext. 210 **E-mail:** mgrey@biasc.org

Letter: CICWQ1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
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Dear Chair Marcus and Members of the Board: On behalf of the Construction Industry Coalition on Water Quality (CICWQ), thank you for the opportunity to provide comments on the proposed 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 Mercury Provisions (Provisions) released for public review on Jan. 3, 2017. For the reasons discussed below and so that we may provide complete, comprehensive, and informed comments to the State Water Resources Control Board (State Water Board) on the Provisions and the 700- page, and very complex Staff Report, we are requesting that:

Response: Comment noted.

Letter: CICWQ1, Pg1, P2	COMMENT	Excerpt: 2	Type: EPA Automatic Extension
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- The State Water Board should work with U.S. Environmental Protection Agency (EPA) to obtain the automatic extension afforded by Section XI.A. of the Consent Decree: Our Children’s Earth Foundation v. U.S. EPA, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (requiring EPA’s promulgation of mercury water quality criteria for the protection of aquatic life) (Consent Decree);

Response: Please see Response to Comment CASQA1-7.

Letter: CICWQ1, Pg1, P2	COMMENT	Excerpt: 3	Type: Insufficient Public Review
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- The State Water Board hearing scheduled for February 7 should be converted to a second workshop for the Board and staff to consider the Staff Report and answer stakeholder questions, which will allow sufficient time for the public to review the voluminous Staff Report and pose important questions for staff to answer and the Board to consider (1) ;

(1) Interested parties and stakeholders had only three working days to review the 700+ page Staff Report in advance of the Jan. 9 workshop, as a practical matter making it impossible to read and digest, much less formulate coherent, informed, and incisive questions.

Response: Please see Responses to Comments WSPA2-2, 18 and 20.

Letter: CICWQ1, Pg2, P1	COMMENT	Excerpt: 4	Type: Request: More Time
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- A 60-day extension of the written comment due date (from February to at least April 17, 2017) should be granted to allow full review of, and preparation of informed comments on, the Staff Report by stakeholders and technical experts;
- The State Water Board hearing for consideration of the Provisions should be postponed until May 2017 to assure that the Board has an

Responses to Comments—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 Mercury Provisions.

<p>opportunity to consider written as well as verbal comments of the public on the proposed Provisions;</p> <ul style="list-style-type: none"> • An additional opportunity for submission of written public comments on any revisions to the proposed Provisions and Staff Report should be provided prior to a final State Water Board hearing to consider adoption of the Provisions; and • The State Water Board hearing to consider adoption of the Provisions should be postponed to September 2017 to accommodate an informed, transparent, and robust public process regarding the Proposed Provisions. 			
<p>Response: The State Water Board hearing for adoption is scheduled for May 2017, giving the Board approximately three months to consider and respond to all written and oral comments. For discussion on extending the hearing for consideration, Please see Response to Comment CASQA1-6.</p>			
Letter: CICWQ1, Pg2, P5	NOT COMMENT	Excerpt: 5	Type: Description of Reg
<p>As you are aware, not only does the Staff Report exceed 700 pages in length, containing 21 technical appendices, it also introduces, develops, explains, analyzes, and evaluates the water quality effects, environmental effects, and economic impacts of a new far-reaching statewide regulatory program, comprised of three new beneficial use designations, five new mercury water quality objectives, and an implementation program.</p>			
<p>Response: Comment noted.</p>			
Letter: CICWQ1, Pg2, P6	COMMENT	Excerpt: 6	Type: Implementation
<p>The implementation program includes, among other things, new requirements for MS4 and Industrial stormwater NPDES permits, and an amendment of the State Implementation Plan requiring incorporation of new, very stringent mercury numeric effluent limits into NPDES permits for POTWs and other non-stormwater discharges. These NPDES permit requirements and effluent limits will be enforceable by water boards and third party citizen suits, creating significant risk of enforcement liability for dischargers, but the Staff Report and Provisions do not set forth a clear path for compliance.</p>			
<p>Response: The Staff Report provides many possible paths of compliance, as detailed in Chapter 7, “Reasonably Foreseeable Methods of Compliance.”</p>			
Letter: CICWQ1, Pg2, P6	COMMENT	Excerpt: 7	Type: Request: More Time
<p>Development of each of the components of the Provisions evaluated in the Staff Report involves analysis and application of highly technical data and information sources – a fact readily acknowledged by the State Water Board staff at, and cited as the very reason for holding, the January 9, 2017 workshop. Indeed, in the workshop State Water Board staff noted on several occasions the length of the Staff Report, the complexity of the technical arguments and analysis in the Staff Report, the “jigsaw puzzle” character of the proposed Provisions, and the very short amount of time available to review the Staff Report.</p>			
<p>Response: Please see Response to comment WSPA2-2.</p>			
Letter: CICWQ1, Pg2, P7	COMMENT	Excerpt: 8	Type: Request: More Time
<p>In light of these facts, the expedited rulemaking schedule does not provide sufficient opportunity for public participation by interested parties. At the January 9, 2017 workshop, staff presented the following schedule for State Water Board adoption of the Provisions:</p>			

Public comment period: January 3 – February 17, 2017
 Public workshop: January 9, 2017
 State Water Board hearing: February 7, 2017
 State Water Board meeting/ considered for adoption May 2017
 Consent Decree deadline for EPA to propose mercury criteria June 30, 2017

Response: Please see Response to Comment WSPA2-2.

Letter: CICWQ1, Pg3, P6	COMMENT	Excerpt: 9	Type: Request: More Time
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The schedule is deficient in the following respects: (a) The schedule allows for only one workshop, which was scheduled only three working days after release of the 700-page Staff Report, depriving the public of a reasonable period of time to complete preliminary review of the document and formulate questions prior to the workshop; (b) It allows for only one public comment period; there is no opportunity for written comments on revised proposed Provisions after receiving initial public comments, but prior to State Water Board consideration of adoption; (c) A total of only five weeks following the workshop are available to the public to review and prepare written comments on the voluminous, highly technical, and complex Staff Report analysis, which requires multidiscipline technical review (including review by, among others, water quality, toxicology, and economic experts) ; and (d) The schedule includes only one Board hearing, which appears to be insufficient to assure that the State Water Board is apprised of technical, legal and policy issues that the public is likely to raise regarding the Provisions, including the stringency versus the likely effectiveness of proposed implementation program measures and controls.

Response: Please see Responses to Comments WSPA2-2 and 18.

Letter: CICWQ1, Pg3, P7	COMMENT	Excerpt: 10	Type: EPA Automatic Extension
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We understand that the State Water Board has scheduled the adoption of the proposed Provisions for May 2017 to meet the June 30, 2017 deadline for the EPA to propose or approve the State Water Board’s numeric water quality criteria (objectives) for mercury to protect aquatic life and aquatic-dependent wildlife. See, Consent Decree: Our Children’s Earth Foundation v. U.S. EPA, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (hereinafter, Consent Decree). However, there are at least two other ways for EPA to comply with the Consent Decree without the State Water Board’s adoption of the proposed Provisions in the spring of 2017 according to its current schedule:

- EPA can file a motion requesting an extension of the June 30, 2017 date under section XI.A. of the Consent Decree, which provides for one automatic extension where the requested extension period is at least 30 days and the requisite notice provisions are met. See, Consent Decree, ¶ 35.

Response: Please see Response to Comment CASQA1-7.

Letter: CICWQ1, Pg3, P9	COMMENT	Excerpt: 11	Type: Let EPA Promulgate.
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- EPA may promulgate aquatic life mercury water quality criteria by June 30, 2017 as contemplated in the Consent Decree. The State Water

Board could then follow up that action with adoption of an implementation program for aquatic life criteria and with new human health related mercury water quality objectives, implementation measures, and definitions of proposed beneficial uses after those proposals have been properly vetted in public hearings and commented upon by interested parties.			
Response: Please see Response to Comment ACWA1-19.			
Letter: CICWQ1, Pg4, P1	NOT COMMENT	Excerpt: 12	Type: Support
We appreciate that it is the State Water Board's preference, as indicated by staff at the workshop, to promulgate the mercury water quality objectives, instead of EPA, so that it can develop concurrently a program of implementation. We generally support the State Water Board's preference, and recognize the potential advantages in designing a comprehensive mercury program versus a piecemealed approach that would require multiple rulemakings.			
Response: Thank you for your general support.			
Letter: CICWQ1, Pg4, P1	COMMENT	Excerpt: 13	Type: EPA Automatic Extension
For this reason, we recommend working with EPA to request a minimum 3-month automatic extension of the June 30, 2017 Consent Decree due date, and the adjustments to the schedule for the public rulemaking process set forth above. To show the feasibility of our request to revise the rulemaking schedule to provide a robust and transparent rulemaking process, we provide an alternative conceptual schedule for the process in Attachment A of this letter.			
Response: Please see Response to Comment ACWA1-19.			
Letter: CICWQ1, Pg4, P2	COMMENT	Excerpt: 14	Type: Too Complex
A rulemaking of this magnitude, scope, complexity, and technical nature – not to mention the regulatory implications of the program which will likely extend far beyond regulation of mercury in light of the new beneficial use categories proposed – surely warrants more than five and one-half week [SIC] total time of public review and comment, and more than a single workshop and Board hearing.			
Response: Please See Response to Comment WSPA2-18.			
Letter: CICWQ1, Pg4, P3	NOT COMMENT	Excerpt: 15	Type: Greet/Ending
We appreciate your consideration of this request for an extension of the State Water Board's comment period and adoption of the proposed Provisions. Should you or your staff have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.			
Response: Thank you.			

ProducersEtAl1

Author: Somach, Simmons & Dunn **Title:** Attnys. **Organization(s):** African American Farmers of California; California Citrus Mutual; California Farm Bureau Federation, California Fresh Fruit Association, California Rice Commission, Dairy Cares, East San Joaquin Water Quality Coalition, Nisei Farmers League, Sacramento Valley Water Quality Coalition, San Joaquin County and Delta Water Coalition,

Address: None

Interest Group: AG

Date: 1/23/2017

Contact person: Tess Dunham

Phone: (916) 446-7979

E-mail: (Insert e-mail)

Letter: ProducersEtAl1, Pg1, P1	COMMENT	Excerpt: 1	Type: Request: More Time
Dear Ms. Townsend: The above-listed agricultural organizations join with other stakeholders (1) to respectfully request that the State Water Resources Control Board (State Water Board) extend the time for submission of written comments on the <i>Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions</i> (Draft Beneficial Uses and Mercury Objectives). On January 3, 2017, State Water Board staff released the aforementioned Draft Staff Report and associated documents. According to the Notice of Opportunity for Public Comment, Staff Workshop, Public Hearing and Notice of Filing, written comments are due to be submitted by noon on February 17, 2017. Considering the import of this proposed action, the substantial volume of documents released and technical nature of the information, a 45-day comment period is not adequate for proper public review and comment. (1) We understand that other stakeholders will also be submitting similar letters requesting an extension of time for public comment, and accordingly, we join with those stakeholders in making this request.			
Response: Please see Responses to Comments WSPA2-2 and 18.			
Letter: ProducersEtAl1, Pg1, P2	COMMENT	Excerpt: 2	Type: Insufficient Pub Review
The agricultural organizations listed above understand that the State Water Board is moving quickly in an attempt to adopt mercury water quality objectives prior to June 30, 2017, due to a Consent Decree in <i>Our Children's Earth Foundation v. U.S. Environmental Protection Agency</i> (Case No. 3:13-cv-2857-JSW). While we appreciate the State Water Board's preference to promulgate such water quality objectives for California, rather than the U.S. EPA, attempting to meet the June 30, 2017 deadline will unfortunately curtail a robust public review process for this rulemaking that will greatly impact dischargers of all types, including agricultural dischargers.			

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Response: Please see Response to Comment MercID1-7.			
Letter: ProducersEtAl1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Too Complex
Further, the proposed action here is much larger and broader than the adoption of mercury objectives for aquatic life and aquatic-dependent wildlife, which is the scope of the Consent Decree as it applies to mercury.			
Response: Please see Response to Comment MercID1-19.			
Letter: ProducersEtAl1, Pg2, P1	COMMENT	Excerpt: 4	Type: Request: More Time
Considering the broad scope of the action proposed, including the adoption of multiple mercury water quality objectives and the creation of new beneficial uses, we join other stakeholders in requesting an extension of time and additional steps to the public process for this rulemaking. Specifically, we join the Association of California Water Agencies and others to request an extension of the public comment period by 60 additional days to on or about April 17, 2017, and postponement of the State Water Board’s first hearing on this issue until May 2017. Then, there should be additional opportunity for the submission of written public comments on any revisions, followed by a final hearing for consideration of adoption in September 2017.			
Response: Please see Responses to Comments WSPA2-2 and 18.			
Letter: ProducersEtAl1, Pg3, P1	COMMENT	Excerpt: 5	Type: EPA Automatic Extension
Further, we understand that this proposed timeline can be accommodated under the terms of the Consent Decree, in that the State Water Board can work with the U.S. EPA to obtain an automatic extension of the Consent Decree. To the extent that the U.S. EPA does not obtain the automatic extension, this timeline would still allow the State Water Board to develop water quality objectives and beneficial uses that are not part of the Consent Decree, and an associated Program of Implementation for all water quality objectives.			
Response: Please see Response to Comment ACWA1-19.			

KFiene1**Author:** Karen Fiene **Title:** Director **Organization(s):** Construction Compliance and Sustainability, Mills College**Address:** 5000 MacArthur Blvd, Oakland, CA 94613**Interest Group:** CATribes**Date:** 1/3/2017**Contact person:** Karen Fiene**Phone:** 510-430-2323**E-mail:** kfiene@mills.edu

Letter: KFiene1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Subject: No Delay on Subsistence Fishing Protection			
Dear Members of the State Water Board,			
Response: Comment noted.			
Letter: KFiene1, Pg1, P2	COMMENT	Excerpt: 2	Type: Support
I strongly oppose any move to delay recognition of subsistence fishing and tribal cultural uses as beneficial uses for California waters. The current proposal within the state's 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 Mercury Provisions (Control Plan) must move forward as is. I view any attempt to "bifurcate" the document and not adopt the beneficial uses at this time as simply responding to an eleventh hour attempt by dischargers and not protective of the most impacted residents of our state.			
Response: There are no plans to delay the rulemaking. Thank you for your support.			
Letter: KFiene1, Pg1, P3	COMMENT	Excerpt: 3	Type: BU's have been delayed
Claims that these beneficial uses need more input and consideration is [sic] incorrect. In fact, combining the beneficial use recognition with the Control Plan was further delay of a process that began in 2013. The Board's Office of Public Participation had initially communicated that proposed beneficial use language would come before the Board in 2013-14. In addition, there has been a lengthy "stakeholder" process where impacted communities, environmentalists, and dischargers had the opportunity to weigh in on the language and express concerns. Meanwhile, pollution remediation plans, such as the Mercury-Reservoir [sic] plan have moved forward without consideration of the deep impacts on people who consume high levels of contaminated fish for basic sustenance.			
Response: Thank you for your comment. Regarding reservoirs, Please see Response to Comment MerclD1-7.			
Letter: KFiene1, Pg2, P1	COMMENT	Excerpt: 4	Type: Do not Delay
The human right to water includes protecting those who must fish to feed themselves. While establishing these beneficial uses will not			

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immediately ensure such protections as waterways are yet to be designated to be impaired, it is unacceptable not to establish the potential to safeguard future generations. Please do not delay.

Response: Thank you for your comment.

CWSP1

Author: David Williams et al. **Title:** BACWA Executive Director **Organization(s):** Bay Area Clean Water Agencies (BACWA)- California Association of Sanitation Agencies (CASA)- Central Valley Clean Water Association (CVCWA)- California Water Environment Association (CWEA)- Southern California Alliance of Publicly Owned Treatment Works (SCAP)

Address: 1225 8th Street, Suite 595 Sacramento, CA 95814 **Interest Group:** POTW

Date: 1/25/2017

Contact person: Adam Link **Phone:** (916) 446-0388 **E-mail:** alink@casaweb.org.

Letter: CWSP1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Dear Chair Marcus and Members of the Board:			
Response: Comment noted.			
Letter: CWSP1, Pg1, P2	COMMENT	Excerpt: 2	Type: Split the Project
The Clean Water Summit Partners are writing in response to the proposed <i>Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions</i> (Draft Beneficial Uses and Mercury Objectives) dated January 4, 2017. We respectfully request the State Water Board “bifurcate” the two proposed actions, moving forward in the near term on the mercury objectives for protection of aquatic life and wildlife piece mandated by the Consent Decree, and moving more deliberately on the proposed beneficial uses for tribal and subsistence fishing component (and any objective attendant thereto).			
Response: Regarding “bifurcation,” Please see Responses to Comments WSPA2-2 and 3.			
Letter: CWSP1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Summary
The Clean Water Summit Partners are the California state and regional wastewater associations committed to working together on issues of critical importance to our collective memberships. Our membership includes the California Association of Sanitation Agencies (CASA), Bay Area Clean Water Agencies (BACWA), Central Valley Clean Water Association (CVCWA), California Water Environment Association (CWEA), and Southern California Alliance of POTWs (SCAP). All members of this coalition have a keen interest in the Draft Beneficial Uses and Mercury Objectives process and are concerned about the direction being proposed.			
Response: Comment noted.			
Letter: CWSP1, Pg1, P4	COMMENT	Excerpt: 4	Type: Support

Responses to Comments—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 Mercury Provisions.

At the outset, the Clean Water Summit Partners recognize the importance of protecting the use of state waters for tribal-cultural practices and for subsistence fishing. We also acknowledge the importance of establishing mercury water quality objectives to protect aquatic life and wildlife, and the State Water Board’s desire to move quickly in that effort to comply with judicially imposed obligations in the matter of <i>Our Children’s Earth Foundation v. U.S. Environmental Protection Agency</i> (Case No. 3:13-cv-2857-JSW).			
Response: Thank you for your support on this matter.			
Letter: CWSP1, Pg1, P4	COMMENT	Excerpt: 5	Type: Too Complex
However, the proposed action here goes far beyond the adoption of mercury objectives for aquatic life and aquatic-dependent wildlife, which is the scope of the Consent Decree related to mercury.			
Response: This project is not only intended to develop Mercury Water Quality Objectives that, if approved by U.S. EPA, would satisfy the conditions of the Consent Decree. Chapter 2 of the Staff Report contains a complete project description.			
Letter: CWSP1, Pg1, P5	COMMENT	Excerpt: 6	Type: Split the Project
The Summit partners believe these two separate regulatory actions (mercury objectives per the consent decree and additional mercury objectives and beneficial use development) can and should be separated for further development and consideration. Bifurcating these two distinct regulatory actions would enable the State Water Board to achieve the adoption deadline for the mercury objectives to protect aquatic life and wildlife without the additional complexity and controversy surrounding the beneficial uses proposal.			
Response: Please see Responses to Comments WSPA2-2 and 3 and ACWA1-19.			
Letter: CWSP1, Pg1, P5	COMMENT	Excerpt: 7	Type: Guidance
Moreover, it would also provide the Water Board an opportunity to develop clear implementation guidance for Regional Boards when determining appropriate permit limits to protect the newly proposed beneficial uses (i.e., T-CUL, T-SUB and SUB). s.			
Response: Please see Responses to Comments ACWA1-19 and WSPA2-2 and 3 regarding bifurcation, and CVCWA1-36 and WSPA2-8 and 34 regarding guidance.			
Letter: CWSP1, Pg2, P1	COMMENT	Excerpt: 8	Type: Split the Project
As currently proposed, the Draft Beneficial Uses and Mercury Objectives will have substantial economic and environmental impacts throughout the state unless the two items are separated. For example, moving forward with the beneficial uses proposal would very likely upset a large number of carefully developed TMDLs in the Delta and San Francisco Bay regions, undoing a significant amount of work already undertaken as well as creating uncertainty in many areas of the state.			
Response: Commenter does not explain how the Provisions would “upset” existing TMDLs or how the work would be “undone.” Regarding potential reopeners of TMDLs, please see Responses to Comments WSPA2-20, 27, 28, 29, and CIEAetA11-5.			
Letter: CWSP1, Pg2, P1	COMMENT	Excerpt: 9	Type: Other pollutants
In addition, the proposed beneficial uses for tribal subsistence and general subsistence fishing could apply to many other contaminants (such as selenium, PCBs, pesticides, and dioxins/furans) aside from mercury. It is our understanding that little, if any, environmental and economic analyses have been performed on these other contaminants, and tying beneficial use adoption directly with the mercury objective process gives			

a false impression that the sole impact of the beneficial uses would be related to mercury management, which is simply inaccurate.			
Response: Please see Responses to Comments WSPA2-20, and ACWA1-101.			
Letter: CWSP1, Pg2, P2	COMMENT	Excerpt: 10	Type: Guidance
Third, and perhaps most importantly, the current proposals related to designation of tribal and subsistence beneficial uses do not contain adequate guidance to the Regional Boards, the discharger community, or the public at large as to how to develop numeric effluent limits to achieve narrative water quality objectives if those uses are adopted. This creates far too much uncertainty in implementation, and such guidance is a necessary component of any tribal and subsistence fishing beneficial use adoption by the State Water Board.			
Response: Regarding guidance from Regional Boards, Please see Responses to Comments WSPA2-8, 34, and CVCWA1-36.			
Letter: CWSP1, Pg2, P3	COMMENT	Excerpt: 11	Type: Too Complex
In summary, we believe there are a number of significant issues related to the beneficial use designations that must be resolved before the State Water Board considers adoption of that proposal. The consensus of multiple reviewers that are experienced in the implementation of TMDLs and basin plan provisions, including mercury control programs, is that there are too many technical and administrative issues in the proposed provisions to allow uniform or successful implementation.			
Response: The commenter does not specifically state any issues related to beneficial uses designations. Water Code section 13050, subdivision (j), requires that water quality control plans contain beneficial uses to be protected, water quality objectives, and a program of implementation to achieve water quality objectives. Water Code section 13240 requires such plans to be established and periodically reviewed and revised, and Water Code section 13170 authorizes the State Water Board to establish water quality control plans in accordance with section 13240. The law does not require each component part of revisions to water quality control plan to be related. As a whole, appropriate water quality standards (including beneficial uses, water quality objectives, and a program to achieve objectives) is being proposed to appropriately augment the Regional Water Boards' respective water quality control plans.			
Letter: CWSP1, Pg2, P3	COMMENT	Excerpt: 12	Type: Request: More Time
It simply makes no sense to fast-track the adoption of these other elements of the current proposal when proceeding more deliberately on the beneficial use development is likely to render a far better outcome which could be supported by stakeholders.			
Response: Please see Responses to Comments WSPA2-2 and 18 and ACWA1-19.			
Letter: CWSP1, Pg2, P3	NOT COMMENT	Excerpt: 13	Type: Support
The Clean Water Summit Partners stand ready to participate in a stakeholder working group to provide input in developing implementation guidance for the beneficial uses, as well as the remaining mercury water quality objectives. We also believe that a robust stakeholder process could result in development of beneficial uses implementation guidance that could accompany a final proposal for the State Board to consider.			
Response: Comment noted.			
Letter: CWSP1, Pg2, P4	COMMENT	Excerpt: 14	Type: Split the Project
In consideration of the above, we respectfully reiterate our request that the State Water Board separate the proposals currently contained in the Draft Beneficial Uses and Mercury Objectives, so that the development of mercury objectives to protect aquatic life and wildlife can still move			

forward, while providing additional time to have robust stakeholder engagement on the other proposed beneficial use designations (and attendant objectives).			
Response: Please see Response to Comment CWSP1-6 above.			
Letter: CWSP1, Pg2, P5	COMMENT	Excerpt: 15	Type: Request: More Time
In addition to the request to separate these two processes, the Clean Water Summit Partners join numerous other stakeholders in requesting an extension of time to comment and additional steps to the public process for this rulemaking.			
Response: Regarding the response to the request for additional time, Please see Response to Comment WSPA2-2.			
Letter: CWSP1, Pg2, P5	NOT COMMENT	Excerpt: 16	Type: Choose an item.
According to the Notice of Opportunity for Public Comment, Staff Workshop, Public Hearing and Notice of Filing, written comments are due to be submitted by noon on February 17, 2017.			
Response: This is correct. Comment noted.			
Letter: CWSP1, Pg2, P5	COMMENT	Excerpt: 17	Type: Request: More Time
We request 60 additional days to on or about April 17, 2017, and postponement of the State Water Board's first hearing on this issue until May 2017. We ask for this extension irrespective of whether the State Water Board decides to bifurcate the two processes, as stakeholders would still need additional time just to review and comment on the mercury objectives for protection of aquatic life and wildlife component.			
Response: Please see Responses to Comments WSPA2-2 and 18 and ACWA1-19.			
Letter: CWSP1, Pg2, P6	COMMENT	Excerpt: 18	Type: Request: More Time
If an extension is granted, there should be additional opportunity for the submission of written public comments on any revisions, followed by a final hearing for consideration of adoption in September 2017. We believe this short extension can be accommodated under the terms of the Consent Decree, in that the State Water Board can work with the U.S. EPA to obtain an automatic extension of the Consent Decree.			
Response: Please see Response to Comment ACWA1-19.			
Letter: CWSP1, Pg3, P1	NOT COMMENT	Excerpt: 19	Type: Greet/Ending
Thank you for your consideration, and if you have any follow up questions or concerns, please contact Adam Link at (916) 446-0388or alink@casaweb.org .			
Response: Comment noted.			

BVPomo1**Author:** Anthony Jack **Title:** Tribal Chairman **Organization(s):** Big Valley Rancheria: Big Valley Band of Pomo Indians**Address:** 2726 Mission Rancheria Road, Lakeport, CA 95453**Interest Group:** CATribes**Date:** 2/5/2017**Contact person:** Anthony Jack**Phone:** 707-263-3924**E-mail:** [Click here to enter text.](#)

Letter: BVPomo1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Dear Governor Brown:			
Response: Comment noted.			
Letter: BVPomo1, Pg1, P2	COMMENT	Excerpt: 2	Type: Support
The Big Valley Band of Pomo Indians is highly supportive of the requested changes to adopt additional beneficial uses in California's <i>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 Mercury Provisions.</i>			
Response: Thank you for your support.			
Letter: BVPomo1, Pg1, P3	COMMENT	Excerpt: 3	Type: Support
Protecting water quality for our members' use and enjoyment is the highest priority for the Tribe. We understand that when water is degraded by runoff, pesticides, and other contaminants, that wildlife, fish and shellfish and plants can retain that pollution. Our members can then be exposed at higher rates than the general population to these contaminants.			
Response: Comment noted. Thank you for your support.			
Letter: BVPomo1, Pg1, P3	COMMENT	Excerpt: 4	Type: Support
Our uses of Clear Lake and other ancestral waters are indistinguishably linked to our spiritual, cultural, subsistence and traditional ways of life and practices and are not being taken into consideration by existing water quality control measures. To enable the protection of our traditional uses, in 2014 the Big Valley Band of Pomo Indians submitted to the State Water Resources Control Board, Resolution 12-10-2014-01 <i>A Resolution Supporting the Adoption of Beneficial Use Definitions For Subsistence Fishing and Native American Cultural Use of Water in the California State Water Resources Control Board Basin Plan.</i>			
Response: Comment noted.			
Letter: BVPomo1, Pg1, P4	NOT COMMENT	Excerpt: 5	Type: Summary
Currently, the Tribal beneficial uses are in discussion and hearings with the State Water Resources Control Board and the next public hearing is Responses to Comments—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 Mercury Provisions.			

Tuesday February 7 th to accept comments on the Water Quality Control Plan. The adoption of these uses will protect existing Tribal beneficial uses which would lead to improved water quality for all Californians. These definitions are as follows:			
Response: Comment noted.			
Letter: BVPomo1, Pg1, P4	NOT COMMENT	Excerpt: 6	Type: Description of Reg
Tribal Traditional & Cultural: Uses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes, including, but not limited to: navigational activities, and fishing, gathering, and/or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, as supported by California Native American Tribes(s).			
Tribal Subsistence Fishing: Uses of water that support the catching or gathering of natural aquatic resources, including fish and shellfish, by California Native Americans, for consumption by individuals, households, and/or communities to meet fundamental needs for sustenance.			
Response: Please note that the Tribal Traditional & Cultural beneficial use definition has been altered, although the emphasis that a California Native America Tribe must confirm the designation has been retained; Please see Response to Comment CIEAetAI1-3.			
Letter: BVPomo1, Pg1, P5	COMMENT	Excerpt: 7	Type: Don't Split
We understand that there's a movement among industrial groups to remove these uses from the plan during Tuesday's hearing. Bifurcating these uses from the plan will unreasonably delay protecting our members' ability to use our waters without impairment. Currently, Tribal traditional uses and Tribal subsistence fishing uses are not considered during the development of any statewide or regional standards, plans or operations such as TMDLs, NPDES permits or Basin Plans. Therefore, we urge that you prevent the removal and delay of acceptance of Tribal Beneficial Uses from this pending statewide Water Quality Control Plan.			
Response: For responses to groups' requests to "bifurcate" the rulemaking, Please see Responses to Comments to WSPA2-2, 3 and ACWA_CWA-19. The State Water Board currently does not plan to split the project into another rulemaking.			
Letter: BVPomo1, Pg2, P1	NOT COMMENT	Excerpt: 8	Type: Greet/Ending
We look forward to working with State Water Resources Control board and other stakeholders in balancing beneficial uses for all waterways in California.			
Response: Thank you for your support.			

ElemIC1**Author:** Agustin Garcia **Title:** Tribal Chairman **Organization(s):** Elem Indian Colony**Address:** Mailing: PO Box 757, Lower Lake, CA 95457 **Interest Group:** CATribes**Date:** 2/4/2017**Contact person:** Agustin Garcia **Phone:** 707-994-3400 **E-mail:** [Click here to enter text.](#)

Letter: ElemIC1, Pg1, P1	COMMENT	Excerpt: 1	Type: Support
The Elem Indian Colony Pomo Tribe is highly supportive of the requested changes to adopt additional beneficial uses in California's <i>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 Mercury Provisions.</i>			
Response: Thank you for your support.			
Letter: ElemIC1, Pg1, P2	COMMENT	Excerpt: 2	Type: Support
Protecting water quality for our members' use and enjoyment is the highest priority for the Tribe. We understand that when water is degraded by runoff, pesticides, and other contaminants, that wildlife, fish and shellfish and plants can retain that pollution. Our members can then be exposed at higher rates than the general population to these contaminants.			
Response: Comment noted. Thank you for your support.			
Letter: ElemIC1, Pg1, P2	COMMENT	Excerpt: 3	Type: Support
Our uses of Clear Lake and other ancestral waters are indistinguishably linked to our spiritual, cultural, subsistence and traditional ways of life and practices, and are not being taken into consideration by existing water quality control measures. To enable the protection of our traditional uses, in 2014 the Elem Indian Colony Pomo Tribe submitted to the State Water Resources Control Board, Resolution EPA-101214 <i>A Resolution Supporting the Adoption of Beneficial Use Definitions For Subsistence Fishing and Native American Cultural Use of Water in the California State Water Resources Control Board Basin Plan.</i>			
Response: Comment noted.			
Letter: ElemIC1, Pg1, P3	COMMENT	Excerpt: 4	Type: Description of Reg
Currently, the Tribal beneficial uses are in discussion and hearings with the State Water Resources Control Board and the next public hearing is Tuesday February 7 th to accept comments on the Water Quality Control Plan. The adoption of these uses will protect existing Tribal beneficial uses which would lead to improved water quality for all Californians. These definitions are as follows:			

Responses to Comments—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 Mercury Provisions.

Tribal Traditional & Cultural: Uses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes, including, but not limited to: navigational activities, and fishing, gathering, and/or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, as supported by California Native American Tribes(s).			
Tribal Subsistence Fishing: Uses of water that support the catching or gathering of natural aquatic resources, including fish and shellfish, by California Native Americans, for consumption by individuals, households, and/or communities to meet fundamental needs for sustenance.			
Response: Please note that the Tribal Traditional & Cultural beneficial use definition has been altered, although the emphasis that a California Native America Tribe must confirm the designation has been retained; please see Response to Comment CIEAEtAI1-3.			
Letter: ElemIC1, Pg2, P1	COMMENT	Excerpt: 5	Type: Don't Split
We understand that there's a movement among industrial groups to remove these uses from the plan during Tuesday's hearing. Bifurcating these uses from the plan will unreasonably delay protecting our members' ability to use our waters without impairment. Currently, Tribal traditional uses and Tribal subsistence fishing uses are not considered during the development of any statewide or regional standards, plans or operations such as TMDLs, NPDES permits or Basin Plans. Therefore, we urge that you prevent the removal and delay of acceptance of Tribal Beneficial Uses from this pending statewide Water Quality Control Plan.			
Response: For responses to groups' requests to "bifurcate" the rulemaking, Please see Responses to Comments to WSPA2-2, 3 and ACWA_CWA-19. The State Water Board currently does not plan to split the project into another rulemaking.			
Letter: ElemIC1, Pg2, P2	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
We look forward to working with State Water Resources Control board and other stakeholders in balancing beneficial uses for all waterways in California.			
Response: Thank you for your support.			

CIBA1		
Author: Carrie L. Garcia	Title: CIBA Chairperson	Organization(s): California Indian Basketweavers' Association
Address: 428 Main Street, Woodland, CA 95695	Interest Group:	CATribes
Date: 2/5/2017		
Contact person: Carrie L. Garcia	Phone: 530-668-1332	E-mail: ciba.org

Letter: CIBA1, Pg1, P1	COMMENT	Excerpt: 1	Type: Support
The California Indian Basketweavers Association is highly supportive of the requested changes to adopt additional beneficial uses in California's <i>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 Mercury Provisions.</i>			
Response: Thank you for your support.			
Letter: CIBA1, Pg1, P2	COMMENT	Excerpt: 2	Type: Support
Protecting water quality for our members' use and enjoyment is the highest priority for the Tribe. We understand that when water is degraded by runoff, pesticides, and other contaminants, that wildlife, fish and shellfish and plants can retain that pollution. Our members can then be exposed at higher rates than the general population to these contaminants.			
Response: Comment noted.			
Letter: CIBA1, Pg1, P2	COMMENT	Excerpt: 3	Type: Regulations do not consider CA Tribe uses
Our uses of all the ancestral waters are indistinguishably linked to our spiritual, cultural, subsistence and traditional ways of life and practices and are not being taken into consideration by existing water quality control measures.			
Response: Comment noted.			
Letter: CIBA1, Pg1, P3	COMMENT	Excerpt: 4	Type: Description of Reg
Currently, the Tribal beneficial uses are in discussion and hearings with the State Water Resources Control Board and the next public hearing is Tuesday February 7 th to accept comments on the Water Quality Control Plan. The adoption of these uses will protect existing Tribal beneficial uses which would lead to improved water quality for all Californians. These definitions are as follows:			
Tribal Traditional & Cultural: Uses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes, including, but not limited to: navigational activities, and fishing, gathering, and/or consumption of natural aquatic resources,			

Responses to Comments—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 Mercury Provisions.

including fish, shellfish, vegetation, and materials, as supported by California Native American Tribes(s).			
Tribal Subsistence Fishing: Uses of water that support the catching or gathering of natural aquatic resources, including fish and shellfish, by California Native Americans, for consumption by individuals, households, and/or communities to meet fundamental needs for sustenance.			
Response: Please note that the Tribal Traditional & Cultural beneficial use definition has been altered, although the emphasis that a California Native America Tribe must confirm the designation has been retained; Please see Response to Comment CIEAetAI1-3.			
Letter: CIBA1, Pg1, P4	COMMENT	Excerpt: 5	Type: Don't Split
We understand that there's a movement among industrial groups to remove these uses from the plan during Tuesday's hearing. Bifurcating these uses from the plan will unreasonably delay protecting our members' ability to use our waters without impairment. Currently, Tribal traditional uses and Tribal subsistence fishing uses are not considered during the development of any statewide or regional standards, plans or operations such as TMDLs, NPDES permits or Basin Plans. Therefore, we urge that you prevent the removal and delay of acceptance of Tribal Beneficial Uses from this pending statewide Water Quality Control Plan.			
Response: For responses to groups' requests to "bifurcate" the rulemaking, Please see Responses to Comments to WSPA2-2, 3, and ACWA_CWA-19. The State Water Board currently does not plan to split the project into another rulemaking.			
Letter: CIBA1, Pg1, P5	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
We look forward to working with State Water Resources Control board and other stakeholders in balancing beneficial uses for all waterways in California.			
Response: Thank you for your support.			

CVBPomo1

Author: Michael Hunter **Title:** Tribal Chairman **Organization(s):** Coyote Valley Band of Pomo Indians

Address: 7601 N. State Street, P.O. Box 39, Redwood Valley, CA 95470

Interest Group: CATribes

Date: 2/2/2017

Contact person: Michael Hunter

Phone: 707-485-8723

E-mail: [Click here to enter text.](#)

Letter: CVBPomo1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Dear Chair Marcus and Members of the Board:			
Response: Comment noted.			
Letter: CVBPomo1, Pg1, P2	COMMENT	Excerpt: 2	Type: Support
We are writing to you to express our support for the proposed beneficial uses for Tribes (Tribal Cultural and Tribal Subsistence Fishing Uses). Coyote Valley Band of Pomo Indians both supports the importance of these uses and their inclusion within the Water Quality Control Plan for Inland Surface Water, Enclosed Bays and Estuaries of California.			
Response: Thank you for your support.			
Letter: CVBPomo1, Pg1, P3	COMMENT	Excerpt: 3	Type: Description of Reg
Tribal Cultural uses of the water differ from other uses because they are linked to place, season and cultural tradition. Exposure levels to pollutants also differ because of the methods of exposure. For cultural uses there are native plants which are put in the mouth, such as basket making materials, which would expose someone at a different level than a recreational user. Additionally, the length of time needed for these activities may also exceed that of use for recreation. Subsistence fishing also exposes consumers to higher levels of pollutants because of the regularity of consumption. The ability to use water in these ways is essential in cultural preservation.			
Response: Comment noted.			
Letter: CVBPomo1, Pg1, P3	COMMENT	Excerpt: 4	Type: Support
We believe that it is appropriate to include these uses with the Water Quality Control Plan for Inland Surface Water, Enclosed Bays and Estuaries of California. One of the reasons for this is that mercury is one of the most dangerous statewide pollutants that people would gain exposure to through these uses and it accumulates in the body. Therefore, repeated exposures become more hazardous to health. Coyote Valley and other Tribes have been working on the introduction of these definitions for several years and during that time uses are continually occurring in Tribes across California exposing them to unsafe levels of pollutants.			
Response: Comment noted. The need for the Tribal Tradition and Culture beneficial use is discussed in Section 6.4 of the Staff Report.			

Responses to Comments—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 Mercury Provisions.

Letter: CVBPomo1, Pg1, P3	COMMENT	Excerpt: 5	Type: Support
Protection of the health of people exposed is time sensitive because pollutants, like mercury, continually accumulate over time exacerbating impacts to health. The ability to use the water safely is essential to our cultural preservation and the ability to pass on important traditions to younger generations.			
Response: Comment noted. The need for the Tribal Tradition and Culture beneficial use is discussed in Section 6.4 of the Staff Report.			
Letter: CVBPomo1, Pg1, P4	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
We look forward to working with State Water Resources Control board and other stakeholders in balancing beneficial uses for all waterways in California. Thank you for your time.			
Sincerely,			
Michael Hunter Tribal Chairman			
Response: Thank you.			

IssacRios1**Author:** Isaac Rios **Title:** Mr. **Organization(s):** Manchester Band Of Pomo Indians**Address:** None **Interest Group:** CATribes**Date:** 2/7/2017**Contact person:** Isaac Rios **Phone:** None **E-mail:** None

Letter: IssacRios1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Poem
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To all executive directors of California Waterboards,
 Here is a poem I wrote on behalf of the Garcia river(point arena, CA)which is known to us
 bokeya Pomo as "p'da hau"-river mouth:

"P'da hau"

"Natural Springs of fresh water gushing to the top soil of the bokeya pomo people,
 Rain water running down the basin giving life to trees, plants and animals;
 which is respected as beings of equal,
 with tule elk roaming through the redwood forest free of obliteration and evil.
 Salmon spawning by the hundreds within streams flowing between numerous trees,
 flowers blooming giving nourishment to insects and bees,
 women gathering willow and sedge root while they sing in harmony.
 From the ocean to the headwaters, wild game plentiful with no fear of starvation,
 Relatives from clear "k'aa-ba'té"(clear lake) traveling from the east to trade obsidian for
 seafood and shells; a form of Commerce to survive as a nation,
 ancestors having ceremony giving thanks to the spirits and creation,
 everyone around the fire praying as their hearts filled with jubilation.
 Upriver where grandma's grinding acorn with mortar and pestle stones,
 Living in tranquility to where we never worked alone,
 for it was our way of life to be the stewards of a place we call home."

Respectfully,
Isaac Rios
Manchester Band Of Pomo Indians

Response: Comment noted. Thank you for your creative comment.

SLRBMI1**Author:** Merri Lopez-Keifer **Title:** Chief Legal Counsel **Organization(s):** San Luis Rey Band of Mission Indians**Address:** 1889 Sunset Drive Vista, California 92081 **Interest Group:** CATribes**Date:** 2/7/2017**Contact person:** Merri Lopez-Keifer **Phone:** 760-724-8505 **E-mail:** www.slrmissionindians.org

Letter: SLRBMI1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Support
We, the San Luis Rey Band of Mission Indians (“SLR” or “Tribe”) is highly supportive of the requested changes to adopt additional beneficial uses in California’s 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 Mercury Provisions (“the Plan”).			
Response: Comment noted. Thank you for your support.			
Letter: SLRBMI1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Statement
Protecting water quality and the health of our tribal members’ traditional cultural uses is one of the highest priorities for the Tribe. Research clearly provides evidence that when water is degraded by runoff, pesticides, and other contaminants, then vital plants, wildlife, fish and shellfish can retain that pollution. Without including Traditional Cultural Uses in the Plan, our tribal members may be dangerously exposed at much higher rates than the general population to these contaminants.			
Response: Comment noted.			
Letter: SLRBMI1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Statement
Our tribal members are active in practicing our living culture, including monitoring and gathering plants for medicinal purposes, basketweaving, and other traditional practices. Our tribal members are active in several locations within Region 9 – San Diego – such as, but not limited to, the Santa Margarita River, San Luis Rey River, Buena Vista Creek, El Salto Falls, Buena Vista Lagoon, Agua Hedionda, Bataquitos Lagoon and all of their respective inlets and tributaries.			
Response: Comment noted.			
Letter: SLRBMI1, Pg1, P2	NOT COMMENT	Excerpt: 4	Type:
These ancestral waters are indistinguishably linked to our spiritual, cultural, subsistence and traditional ways of life and practices and are not being taken into consideration by existing water quality control measures. We find this to be unacceptable.			
Response: Comment noted.			
Letter: SLRBMI1, Pg2, P3	COMMENT	Excerpt: 5	Type: Description of Reg

Responses to Comments—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 Mercury Provisions.

<p>We urge that the adoption of Tribal Traditional & Cultural Uses and Tribal Subsistence Fishing be approved as provided below:</p> <p>Tribal Traditional & Cultural: Uses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes, including, but not limited to: navigational activities, and fishing, gathering, and/or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, as supported by California Native American Tribe(s).</p> <p>Tribal Subsistence Fishing: Uses of water that support the catching or gathering of natural aquatic resources, including fish and shellfish, by California Native Americans, for consumption by individuals, households, and/or communities to meet fundamental needs for sustenance.</p>			
<p>Response: Please note that the Tribal Traditional & Cultural beneficial use definition has been altered, although the emphasis that a California Native America Tribe must confirm the designation has been retained; Please see Response to Comment CIEAEtAI1-3.</p>			
Letter: SLRBMI1, Pg2, P4	NOT COMMENT	Excerpt: 6	Type: Do not Split
<p>SLR has recently been made aware that there's a movement among industrial groups to remove these uses from the Plan during today's hearing. Bifurcating these uses from the Plan will unreasonably delay protecting our tribal members' ability to use our waters without impairment.</p>			
<p>Response: For responses to groups' requests to "bifurcate" the rulemaking, Please see Responses to Comments to WSPA2-2, 3, and ACWA_CWA-19. The State Water Board currently does not plan to split the project into another rulemaking.</p>			
Letter: SLRBMI1, Pg2 P4	COMMENT	Excerpt: 7	Type: Support
<p>Currently, Tribal Traditional & Cultural Uses and Tribal Subsistence Fishing Uses are not considered during the development of any statewide or regional standards, plans or operations such as TMDLs, NPDES permits or Basin Plans. Therefore, we urge that you prevent the removal and delay of acceptance of Tribal Beneficial Uses from this pending statewide Water Quality Control Plan. To do otherwise would be unnecessarily and unfairly discriminatory.</p>			
<p>Response: Thank you for your support.</p>			
Letter: SLRBMI1, Pg2, P3,	NOT COMMENT	Excerpt: 8	Type: Greet/Ending
<p>We look forward to working with State Water Resources Control board and other stakeholders in balancing beneficial uses for all waterways in California.</p>			
<p>Response: Comment noted.</p>			

CLADP&R1**Author:** Norma E. Garcia **Title:** Chief Deputy Director **Organization(s):** County of Los Angeles Department of Parks and Recreation**Address:** Executive Offices, 433 South Vermont Avenue Los Angeles, CA 90020-1975 **Interest Group:** OTHER**Date:** 2/14/2017**Contact person:** Mr. Jim Smith, Chief of Development **Phone:** 213-639-6706 **E-mail:** jsmith@parks.lacounty.gov

Letter: CLADP&R1 Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
INPUT FOR PUBLIC HEARING ON FEBRUAEY [sic] 07, 2017			
Thank you for you email from the State Water Resources Control Board dated December 30, 2016 regarding the Revised Notice: Tribal and Substance Fishing Beneficial Uses and Mercury Provisions – Notice of Opportunity for Public Comment, Staff Workshop, Public Hearing and Notice of Filing.			
Response: Comment noted.			
Letter: CLADP&R1 Pg1, P2	COMMENT	Excerpt: 2	Type: Not applicable
Due to the nature of the use of our lakes, the Water Quality Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California, Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions does not apply to our Department.			
Response: Commenter is either incorrect or unclear regarding its responsibilities of operation of what are called “[its] lakes”. The Water Boards designate beneficial uses and apply water quality objectives to those beneficial uses via basin plan amendment processes. This rulemaking is a basin plan amendment to the statewide plan for Inland Surface Waters, Enclosed Bays, and Estuaries, and at least some of the County Department of Recreation’s lakes are subject to the Provisions. For example, the Los Angeles Regional Water Quality Control Board’s basin plan lists Castaic Lake’s beneficial uses in Table 2-1, which include WILD and RARE. The San Gabriel River Reach 4 (Ramona Blvd. to Santa Fe Dam) is designated for WILD in the same table. The County Department of Parks and Recreation operates both Castaic Lake State Recreation Area and the Santa Fe Dam Recreation Area. If the responsibility to comply with the Water Boards’ regulations belongs to another agency, Commenter fails to describe what those agencies are.			
Letter: CLADP&R1 Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Greet/Ending
Thank you for your e-mail informing us about the Public Hearing set for February 7, 2017. Should you have any questions, please contact Mr. Jim Smith, Chief of Development at (213) 639-6706 or by email at jsmith@parks.lacounty.gov .			
Response: Comment noted.			

Responses to Comments—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 Mercury Provisions.

SARDA1**Author:** Alfred Javier **Title:** SARDA Chairperson **Organization(s):** Santa Ana River Discharger Association (SARDA)**Address:** [Click here to enter text.](#) **Interest Group:** STORM**Date:** 2/17/2017**Contact person:** Alfred Javier **Phone:** (951)928-3777 extension 6327 **E-mail:** [Click here to enter text.](#)

Letter: SARDA1 , Pg.1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Santa Ana River Dischargers Association (SARDA) is thankful for the opportunity to comments on the State Water Quality Control Board’s 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 Mercury Provisions (Draft Beneficial Uses and Mercury Objectives), which was distributed for public review on January 4, 2017.			
Response: Comment noted.			
Letter: SARDA1 , Pg1, P1	COMMENT	Excerpt: 2	Type: Request: More Time
SARDA respectfully requests for the comment period to be extended and to allow for additional steps of the public process for this rulemaking.			
Response: Please See Responses to Comments WSPA2-2, and 18.			
Letter: SARDA1 , Pg1, P1	COMMENT	Excerpt: 3	Type: Split the Project
Additionally, we request that the State Water Board separate the mercury objective, per the U.S. EPA Consent Decree ¹ and additional mercury objectives and beneficial use development guidelines.			
Footnote 1: Our Childrens Earth Foundation and Ecological Rights Foundation vs U.S. EPA, No. 3:13-cv-1857-JSE (2014)			
Response: Regarding bifurcation, Please see Responses to Comments WSPA2-2, 3 and ACWA_CWA-19.			
Letter: SARDA1 , Pg1, P1	COMMENT	Excerpt: 4	Type: Description of Reg
Finally, SARDA is concerned with setting the proposed “converted” water column mercury value at 12 ng/L for water body/beneficial use designations. In particular, how this measure will be measured and how it could impact effluent dominated streams such as the Santa Ana River			
Response: Section 6.12 of the Staff Report discusses the options for determining effluent limits for municipal wastewater and industrial dischargers. The advantage of using a water column concentration based on a translator is that the procedures in the SIP can be used to			

Responses to Comments—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 Mercury Provisions.

determine reasonable potential and to set effluent limits in permits and it is much less complicated for permit writers to include in permits. A fish tissue concentration is very complicated to for a reasonable potential analysis and for purposes of setting permit limits. A fish tissue limit will potentially require very expensive monitoring requirements to determine compliance with permit limits. Effluent limit would only be required for municipal wastewater and industrial discharges and is based on an annual average for the purposes of determining reasonable potential and effluent limits. It does not apply to storm water and non-point source discharges. Effluent dominated streams, such as the Santa Ana River, are considered flowing waters and are subject to an effluent limit of 12 ng/L.

The Staff Report discusses options for determining effluent limitations in Chapter 6.13. In addition, Appendix N discusses the current performance of NPDES discharges. Table N-6 demonstrates under current conditions that over 90% of the POTW dischargers would currently meet an effluent limit based on a water column translator of 12 ng/L, and about 70% of industrial dischargers could meet an effluent limit based on the water column translator of 12 ng/L. Section IV.D.2.c. of the Provisions describes the procedures for determining reasonable potential. Dischargers that do not demonstrate reasonable potential are not subject to routine monitoring. Section IV.D.2.d. of the Provisions discusses the routine monitoring frequencies for municipal wastewater and industrial dischargers that demonstrate reasonable potential. Depending on the permitted discharge routine monitoring would typically be required either quarterly or annually.

In addition, Please see Response to Comment WSPA2-54.

Letter: SARDA1 , Pg1, P2	NOT COMMENT	Excerpt: 5	Type: Author Description
SARDA is an association of 10 inland Publicly Owned Treatment Works (POTW) dischargers along the Santa Ana River in Southern California. This association was formed so discharger agencies could work with one another on common goals associated with federal or state proposed regulations, plans and policies. Since 1991, SARDA has been monitoring several species of fish within the Santa Ana River for mercury, and have recently expanded these monitoring efforts to include methylmercury			
Response: Comment noted.			
Letter: SARDA1 , Pg1, P2	COMMENT	Excerpt: 6	Type: Support
SARDA is committed to continuing to work together on issues of importance as a collaborative group and thus, agrees with and supports the Clean Water Summit Partners letter dated January 25, 2017, for the Draft Beneficial Uses and Mercury Objectives.			
Response: Comment noted.			
Letter: SARDA1 , Pg2, P1	COMMENT	Excerpt: 7	Type: Request: More Time
SARDA recognized the importance of protecting the use of state waters for tribal-cultural practices and for subsistence fishing. This includes establishing NEW mercury water quality objectives to protect aquatic life and wildlife. However, SARDA request that adoption of the Draft Beneficial Uses and Mercury Objectives be postponed to allow for an additional 60 days, or until April 17, 2017. This extension would allow for additional time for State Water Board staff and stakeholders, including those impacted in Southern California, to discuss and vet out potential problems for stakeholders while getting further clarification on the proposed plan.			
Response: Regarding the timeline for this rulemaking, Please see Responses to Comments WSPA2-2 and 18 and ACWA1-19. Please see			

Responses to Comments—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 Mercury Provisions.

Response to Comment MerclD1-7 regarding public outreach and involvement.			
Letter: SARDA1 , Pg2, P2	COMMENT	Excerpt: 8	Type: Split the Project
SARDA believes there is a need to separate the U.S. EPA obligation to develop water quality criteria for wildlife (prey fish and California least tern prey fish objectives) from the remaining portion of the proposal. The State Water Board could adopt the objectives consistent with the terms of the Consent Decree while allowing appropriate time and consideration for the development of water quality objectives, beneficial use definitions and program implementation with all stakeholders. SARDA feels that this policy was rushed to meet a deadline and not completely vetted with all stakeholders, especially those impacted in Southern California where river and stream can be effluent dominated.			
Response: Regarding bifurcation, Please see Responses to Comments WSPA2-2, 3, and ACWA_CWA-19, as well as the Response to Comment SARDA1-8 above.			
Letter: SARDA1 , Pg2, P3	COMMENT	Excerpt: 9	Type: Description of Reg
Finally, SARDA is concerned with the proposed converted water column value of 12 ng/L to be used for reasonable potential analysis and development of effluent limitations. It is understandable that the derived value is from fish tissue, however, the concern is that this may be applied as a standard to the water column as a basin objective. SARDA has mercury fish tissue data from 1991 to 2013 and recently started monitoring for methylmercury in 2015. No water column data has been gathered at the proposed low level and, therefore, the site-specific water column translation is not known. SARDA is concerned that dischargers to the effluent dominated water body, Santa Ana River, would be subject to an unattainable limit or unnecessary TMDL. If this happens, upper discharges could cease and impact downstream beneficial users reliant upon the water.			
Response: All of the mercury water quality objectives contained in Section III.D of the Provisions are based on fish tissue concentrations. Attainment of the objectives is based on methylmercury concentrations in fish tissue. The value of 12 ng/L discussed in Section IV.D.2 of the provisions is recommended as a translator for discharges into flowing water bodies. The translator only applies to municipal and industrial dischargers for purposes of determining reasonable potential and setting effluent limits in NPDES permits. In addition see response to WSPA2-54.			
Letter: SARDA1 , Pg4, P4	NOT COMMENT	Excerpt: 10	Type: Greet/Ending
Thank you again for the opportunity to comment on the Draft Beneficial Uses and Mercury Objectives. If you have any questions, please contact me (951) 928-3777 extension 6327.			
Response: Comment noted.			

SJTA1**Author:** Patrick D. Lewis **Title:** PDL/llw **Organization(s):** O’Laughlin & Paris LLP**Address:** [Click here to enter text.](#) **Interest Group:** Water Agencies**Date:** 1/3/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: SJTA1 , Pg1, P1	COMMENT	Excerpt: 1	Type: Greet/Ending
<p>The San Joaquin Tributaries Authority (“SJTA”) has reviewed the Draft Staff Report, including Substitute Environmental Documentation for 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 Mercury Provisions (“Proposed Provisions”). The SJTA does not oppose the Board’s efforts to recognize and protect Tribal beneficial uses. However, the SJTA has concerns regarding the specific requirements and implementation methods of the Proposed Provisions. The following comments are provided with the aim of furthering the Board’s efforts, and for the purpose of obtaining additional clarity with respect to certain issues.</p>			
Response: Comment noted.			
Letter: SJTA1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
<p>I. Extension of Comment Period</p> <p>As a preliminary matter, the SJTA respectfully requests the State Water Board (“SWB”) extend the time for submission of written comments on the Proposed Provisions. Considering the significance of these actions, the substantial volume of documents released (724 pages), and technical nature of the information, a 45-day comment period is insufficient to allow for thorough public review and comment. Currently, there is a large degree of confusion on the part of the regulated community due to the broad scope of the proposed actions. Specifically, SJTA requests extension of the public comment period by an extra 60-days, to on or about April 17, 2017, and postponement of the SWB’s first hearing on this issue until May 2017.</p>			
Response: Regarding the timeline of the rulemaking, Please see Responses to Comments WSPA2-2 and 18 and ACWA1-19. Please see Response to Comment MerclD1-7 regarding public outreach and involvement.			
Letter: SJTA1 , Pg2, P1	COMMENT	Excerpt: 3	Type: Description of Reg
<p>II. Regulation of Mercury Levels of Reservoirs and Lakes.</p>			

Responses to Comments—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 Mercury Provisions.

The Proposed Provisions are a separate and distinct project from the Reservoir Program. State Water Board Staff is currently developing the Reservoir Program which aims to establish a program to implement the Proposed Provisions’ “water quality objectives for Commercial and Sport Fishing (COMM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE) in all California reservoirs impaired by mercury for those uses.” (SED, 1.6 at p. 4.) In the substitute environmental document (“SED”), SWB Staff states that if the Board fails to adopt the Reservoir Program, the Proposed Provisions will be implemented on a case-by-case basis for discharges to reservoirs, as described in options 1-3 of Section 6.13.3. (Ibid.) If SWB Staff plan to rely on the Proposed Provisions to regulate discharges to reservoirs, it must first disclose the regulation, then it must evaluate the environmental impacts of the regulations, and disclose these impacts to the public. The SED does not contain any such disclosure or evaluation. The casual reference to the Proposed Provisions as a fall-back for the Reservoir Program does not comply with CEQA. State Water Board Staff must either (1) evaluate the impacts of regulating reservoir discharges now; or (2) develop a Reservoir Program that complies with CEQA later. It cannot provide a placeholder in the Proposed Provisions for regulations that are not fully disclosed and evaluated.

Response: The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) identifies similarities between the proposed rulemaking project and the Reservoir Program (or other programs) in order to facilitate coordination of the programs, which are otherwise separate and distinct programs and projects as designated (see Staff Report, Section 1.6, “Relationship to the Statewide Mercury Control Program for Reservoirs”). The relationship between the project and the Reservoir Program (and other programs) is further described in the cumulative impacts analysis and discussion included in Chapter 8.7, and Appendix E provides a description of related government mercury programs. In addition, as described in Chapters 7 and 8 of the Staff report:

- The State Water Board’s Reservoir Program is intended in part to establish a program to implement the Provisions’ water quality objectives for Commercial and Sport Fishing (COMM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE) in all California reservoirs impaired by mercury for those uses. The Reservoir Program recognizes the inherent differences in the characteristics of reservoirs and (for example) streams or rivers as hydrologic units, and has objectives limited by the intended application to reservoirs as opposed to other hydrologic units.
- The proposed rulemaking, “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 MERCURY PROVISIONS”, is intended to establish water quality objectives for mercury in any inland waters, and also recognizes that water quality objectives for reservoirs may require case-by-case evaluation (see Staff Report, Section 7.2.10) because of the differences in reservoirs as hydrographic units. Further, the proposed rulemaking provisions have much broader application and objectives, and are designed to have independent utility, whether or not the Reservoir Program is ultimately adopted by the State Water Board. If the State Water Board does not adopt a Reservoir Program, the rulemaking Provisions will stand-alone and be implemented on a case-by-case basis for discharges to reservoirs, as described in Section 6.13.3 of the Staff Report.

In addition, Please See Response to Comment ACWA1- 180.

Letter: SJTA1 , Pg2, P2-3	COMMENT	Excerpt: 4	Type: Description of Reg
<p>[II. Regulation of Mercury Levels of Reservoirs and Lakes. (Continued)]</p> <p>One of the difficulties with relying on the Proposed Provisions for reservoir regulations is the irregularities with the proposed options for calculating effluent limitations for municipal wastewater and industrial discharges that preclude the Board and the public from understanding the true impacts the use of the Proposed Provisions will have on the environment. For instance, under the Proposed Provisions only municipal wastewater and industrial facilities that discharge directly to a reservoir or lake would require new water quality objectives based on effluent limitations. (SED, 1.6 at p. 4.) By the Board’s own account there are few discharges to these waters (about twelve), and only six of these discharges would need to be regulated. (SED, 6.13.3 at p. 155.) In opposite, the Reservoir Program may include waste load allocations for discharges upstream of reservoirs. These are intended to help achieve the mercury water quality objectives in the reservoir, rather than the upstream water body. (SED, 6.13.3 at p. 157.) However, the Proposed Provisions are unclear on whether this approach will be used on upstream dischargers if the Reservoir Program is not adopted. Furthermore, it is not clear why the Board focuses on regulating these few discharges (potentially only six), when municipal wastewater and industrial discharges are a relatively minor source of mercury to the environment compared to other sources. (SED, 6.13.2 at p. 151.)</p>			
<p>Response: partial</p> <p>Please see Response to Comment SJTA1-3.</p> <p>As discussed in Section 6.13.3 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report), “The Reservoir Program may include waste load allocations for discharges upstream of reservoirs. These waste load allocations would be intended to achieve the Mercury Water Quality Objectives in the reservoir, not in the upstream water body. Therefore, the permit writer should consider both possible requirements (if applicable to the discharge) and select the most stringent requirement for the discharge.” If there is no waste load allocation upstream of a reservoir required under the Reservoir Program or any other program, then the permit writer (at the project level) would not need to consider that requirement in considering the applicable permit conditions.</p> <p>Also, the areas of “focus” for the Provisions, and the need and purpose of the Provisions, is discussed in detail in Chapters 1 and 2 of the Staff Report.</p> <p>In addition see response to ACWA1-180 and MercID1-6</p>			
Letter: SJTA1 , Pg2-3, P4	COMMENT	Excerpt: 5	Type: Description of Reg
<p>[II. Regulation of Mercury Levels of Reservoirs and Lakes. (Continued)]</p> <p>Of further concern to the SJTA is the case-by-case or permit-by-permit regulation of effluent discharges to reservoirs and lakes implemented by the Proposed Provisions. Specific effluent limitations were not developed for discharges to reservoirs because the Board plans to assign waste load allocations using reservoir TMDLs that will be developed as part of the Reservoir Program. If specific waste load allocations are preferable in the Reservoir Program, it is not clear why the Proposed Provisions, that propose a case-by-case approach, would be appropriate. In addition, if</p>			

upstream discharges will be regulated by the Proposed Provisions, numerous (potentially more than 50) water bodies would require case-by-case effluent limitations. This approach does not inform the regulated community as to which entities could be regulated under the Proposed Provisions if the Reservoir Program is not adopted.			
Response: Please see Response to Comment MerCID1-6. In addition, although some national data on bioaccumulation factors is available for lakes and reservoirs, which average about 1 ng/L, there is no corresponding data to confirm that those bioaccumulation factors for lakes and reservoirs are appropriate for California. Chapter IV.D.2.b.1 of the Provisions provide available options for Regional Water Boards and dischargers to derive appropriate site-specific bioaccumulation factors. Section 6.13.3 of the Staff Report states that, “For reservoirs and lakes, since there are few discharges to these waters (about 12), and many of these discharges (6) would be assigned waste load allocation from the reservoir TMDL being developed as part of the Reservoir Program, specific effluent limitations were not developed for discharges to reservoirs or lakes as part of the Provisions. If any permit for these six facilities is renewed after the Provisions are adopted but before the reservoir TMDL is adopted as part of the reservoir program, the Provisions allow for requirements to be developed on a case-by-case basis.			
Letter: SJTA1 , Pg3, P1	COMMENT	Excerpt: 6	Type: Reservoirs
[II. Regulation of Mercury Levels of Reservoirs and Lakes. (Continued)] It is also unclear which water quality objectives the Board will seek to implement on reservoirs and lakes if the Reservoir Program is not adopted. The Reservoir Program aims to implement the water quality objectives for Commercial and Sport Fishing (COMM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE) beneficial uses. (SED, 1.6 at p. 4.) However, under the Proposed Provisions not only could the above beneficial uses’ water quality objectives be implemented, but also the more stringent water quality objectives of Tribal Subsistence Fishing (TSUB), Subsistence Fishing (SUB), and Tribal Tradition and Cultural (CUL) beneficial uses may be implemented. Thus, if the Reservoir Program is not adopted there is potential for more stringent effluent limitations to be implemented on reservoirs and lakes.			
Response: Application of the objectives is described in Chapter III.D.2 of the Provisions. Which objectives apply depends on the designated beneficial uses or if the water body is located in one of the California least tern designated habitats, which are included in Attachment C of the Provisions. Attachment B of the Provisions provides a decision diagram to help dischargers and regulators determine which water quality objectives apply and which objectives to focus on for sampling purposes. The mercury water quality objective for CUL is equivalent to COMM. The water quality objectives for SUB and T-SUB will not apply to any waters at the time the Provisions are adopted and will only apply to any water bodies after the applicable Regional Water Board designates one of these beneficial uses to the water body.			
Letter: SJTA1 , Pg3, P2	NOT COMMENT	Excerpt: 7	Type: Summary
The above concerns relate to the Board’s implementation of option one, the recommended effluent limit calculation method for municipal wastewater and industrial discharges.			
Response: Comment noted.			
Letter: SJTA1 , Pg3, P2	COMMENT	Excerpt: 8	Type: Description of Reg
[II. Regulation of Mercury Levels of Reservoirs and Lakes. (Continued)] Option two, proposes to set the effluent limitations for discharges to reservoirs and lakes consistent with the limits from the Proposed Mercury			

Control Program for Reservoirs. (SED, 6.13.3 at p. 158.) While the Reservoir Program may have slightly different categories of facilities than those in the Proposed Provisions, and may include other requirements for impaired reservoirs it is otherwise the same plan. However, the SED of the Proposed Provisions does not disclose or analyze these limits or the implementation of this plan. For this reason, such limits cannot be adopted as part of the Proposed Provisions.			
Response: Option two, discussed in Section 6.13.3 of the Staff Report, is not recommended by Staff. Rather, the Staff recommendation is Option One, which would be consistent for all water body types.			
Letter: SJTA1 , Pg3, P3	COMMENT	Excerpt: 9	Type: Too Complex
[II. Regulation of Mercury Levels of Reservoirs and Lakes. (Continued)] Based on all of the issues noted above the SJTA believes there is insufficient information to inform the public, regulated entities, and the Board of the potential significant environmental effects of using the Proposed Provisions as a backfill if the Reservoir Program is not adopted. The SJTA recommends that either additional analysis and information pertaining to the use of the Proposed Provision to regulate mercury levels in reservoirs and lakes be added to the current document (i.e., entities to be regulated, scope of the regulations, applicable beneficial uses to waterbodies, etc.), or that the Proposed Provisions be dropped as substitute regulations for the Reservoir Program.			
Response: The Staff Report includes an analysis of the environmental effects the proposed Provisions for all water body types in California, including reservoirs. The water quality objectives and the corresponding program of implementation would apply to all California waters upon adoption. As described in Section 8.7.2 of the Staff Report, the Reservoir Program is a related statewide project designed to mitigate the high mercury methylation rates associated with reservoirs.			
Letter: SJTA1 , Pg3, P4	COMMENT	Excerpt: 10	Type: Description of Reg
III. Narrative Water Quality Objective for Subsistence Fishing Beneficial Use and Reservoir/Lake Water Quality Objectives. The Proposed Provisions recommend the Board adopt a narrative water quality objective for subsistence fishing and for lakes and reservoirs if the Reservoir Program is not adopted (SED, 6.5.3 at p. 117, and Table 6-1 at p. 153.) With a narrative water quality objective, effluent limitations contained in permits would be determined on a case-by-case basis, based on consideration of site-specific factors. (Id. at p. 118.) This approach would require the identification of fish consumption rates for each specific water, identification of existing mercury levels in fish, and other very specific facts for each potential regulated water body prior to regulation. These requirements and the process by which such information would be obtained is not disclosed or evaluated.			
Response: The narrative objective for the Subsistence Fishing (SUB) beneficial use would apply to any water where designated by the applicable Regional Water Board, not just reservoirs. As discussed in Section 6.5 of the Staff Report, the data on subsistence fishing indicate that the use is variable around the state. In his peer review, Dr. Marc W. Beutel expressed his concern in setting a single subsistence fishing objective for all of California (See comment MWB 17 in Appendix S of the Staff Report). Staff recommendation in Section 6.5.4 of the Staff Report recommends that the Board, “adopt a narrative water quality objective for subsistence fishing (SUB) and direct the use of national subsistence fishing consumption rate of 142 g/day (four to five meals per week), unless site-specific information indicates otherwise.” Therefore, in the absence of site specific data the national fish consumption rate may be used to set a water quality objective and to help derive appropriate effluent limits.			

Letter: SJTA1 , Pg4, P1	COMMENT	Excerpt: 11	Type: Description of Reg
<p>[III. Narrative Water Quality Objective for Subsistence Fishing Beneficial Use and Reservoir/Lake Water Quality Objectives. (Continued)] If a Regional Board were to designate a water body with the beneficial use of Subsistence Fishing and amend its basin plan, the accompanying substitute environmental document would not alert regulated entities of potential significant economic impacts created by the amendment. Rather, regulated entities would only learn of new water quality regulations after the Regional Board determined fish consumption rates. Thus, regulated entities are precluded from participating in the initial stages.</p>			
<p>Response: The Regional Water Boards will designate Beneficial uses through the Basin Planning Process pursuant to Water Code Section 13240 et. Seq and the federal public participation process to fully engage stakeholders. The degree to which focused stakeholder groups or other means of engagement will be determined by the individual Water Boards. The Porter Cologne Water Quality Control Act requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subs. (a)- (d).) These considerations are required for any Basement Planning Process amendment, and as such would include the relevant Water Board’s economic considerations. In addition any designation is subject to State Water Board approval and notice which will allow additional stakeholder outreach if necessary. Finally, the scientific portion of the designation, which would include the science behind the determination of site-specific objectives such as those informed by fish consumption rates, are subject to legal peer review requirements.</p>			
Letter: SJTA1 , Pg4, P1	COMMENT	Excerpt: 12	Type: Description of Reg
<p>[III. Narrative Water Quality Objective for Subsistence Fishing Beneficial Use and Reservoir/Lake Water Quality Objectives. (Continued)] Furthermore, the Proposed Provisions highlight the challenges and lack of clarity regarding the determination of the average number of meals per week non-tribal subsistence fishers consume. “[I]t is not clear which studies or consumption rates represent subsistence fishing versus those that represent recreational fishing.” (SED, 4.9 at p. 74.)</p>			
<p>Response: The Information in Appendices H and J was included in the information submitted for peer review. The peer review comments and Board staff responses are included in Appendix S of the Staff Report. The peer reviewers determined that the proposed fish tissue objectives for the protection of human health and wildlife are appropriate with one exception. They commented that the fish consumption studies for subsistence fishing in California are inadequate to set a statewide numeric objective for subsistence fishing. Subsequently the Provisions were modified to include a narrative rather than a numeric objective for subsistence fishing.</p> <p>The 0.04 mg methylmercury/kg fish tissue concentration is only for the T-SUB beneficial uses in Native American tribal areas. It will not affect the majority of surface water bodies that have COMM beneficial use. As stated in the Staff Report Option 2 in Section 6.2, the 0.04 mg MeHg/kg fish tissue concentration is based on the recent Tribes Fish Use study, which shows the higher fish consumption rate by the Native Americans. Thus, the 0.04 mg MeHg/kg is necessary to protect human health in the Native American tribal area. See Staff Report sections 3.5 and 3.10 for further details.</p>			

Staff is recommending that site-specific fish consumption patterns be used for both tribal subsistence fishing and subsistence fishing water quality objectives when such information is available. Such site-specific objectives would be designated through the basin planning process and would require a thorough public process, as described in Response to Comment SJTA1-11.			
Letter: SJTA1 , Pg4, P1	COMMENT	Excerpt: 13	Type: CEQA
[III. Narrative Water Quality Objective for Subsistence Fishing Beneficial Use and Reservoir/Lake Water Quality Objectives. (Continued)] To the extent the Proposed Provisions allow for future regulation based on a new beneficial use, the SED must identify how the proposed regulations will be implemented and at what point the regulated community will be informed of potential environmental impacts.			
Response: The staff report adequately discloses the environmental impacts that could flow from the designation of the beneficial uses as it applies to mercury, as well as recognizing that other objectives may need to be developed to protect the beneficial uses (See Chapters 2.3, 2.5, 6, 7 and 8). Because it is unknown as to where or when the designations will occur, the Staff Report is only able to provide a program level of analysis. Any subsequent designation would require a project specific CEQA document that would analyze the potential environmental effects of the designation at that time. The Regional Water Boards will designate beneficial uses through the Basin Planning Process pursuant to Water Code Section 13240 et. Seq and the federal public participation process to fully engage stakeholders. The degree to which focused stakeholder groups or other means of engagement will occur will be determined by the individual Water Boards. In addition any designation is subject to State Water Board approval and notice which will allow additional stakeholder outreach if necessary. Please see Response to Comment MerclD1-7 regarding public outreach.			
Letter: SJTA1 , Pg4, P2	COMMENT	Excerpt: 14	Type: Description of Reg
[III. Narrative Water Quality Objective for Subsistence Fishing Beneficial Use and Reservoir/Lake Water Quality Objectives. (Continued)] The Proposed Provisions allude to the necessity of regulating other harmful substances as part of the water quality objectives for Tribal Subsistence and non-tribal Subsistence Fishing Beneficial Uses. These other harmful substances include polychlorinated biphenyls (PCBs), dioxins/furans, benzo(a)pyrene (BaP), hexachlorobenzene (HCB), alky-led, pesticides, herbicides, and toxins produced by cyanobacteria present in algae blooms. (SED, appen. T at p. T-5.) To the extent the Proposed Provisions include the regulation of these substances, the SED must first disclose and analyze such regulation or implementation procedures for these substances. The failure to analyze the proposed regulations defeats the purpose behind the creation of a substitute environmental document by failing to inform the public or the Board of the impacts that may occur from including these substances in water quality objectives.			
Response: Regarding other pollutants, Please see Response to Comment WSPA2-2.			
Letter: SJTA1 , Pg4, P3	COMMENT	Excerpt: 15	Type: Beneficial Uses
IV. Water Quality Objectives Potentially Necessary to Protect Tribal Tradition and Cultural Beneficial Uses. The proposed Provisions include development of new Tribal and Cultural Beneficial Uses. However, the SED fails to identify or evaluate the environmental impacts of implementing these new beneficial uses.			
Response: Section 8.1.2 of the Staff Report contains a detailed explanation of the level of environmental impact analysis performed and the regulatory basis of that analysis. Additionally, Please see Appendix T section 7 regarding potential effects of designation.			
Letter: SJTA1 , Pg4, 5, P4, 1-2	COMMENT	Excerpt: 16	Type: Beneficial Uses

Responses to Comments—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 Mercury Provisions.

[IV. Water Quality Objectives Potentially Necessary to Protect Tribal Tradition and Cultural Beneficial Uses (Continued)]

The Proposed Provisions state that the Tribal Traditional and Cultural Beneficial uses relate to “[u]ses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes.” (Id. at p. T-1.) However, water quality objectives have yet to be developed for many of these past, present, or probable future uses and an exhaustive list of potential uses that may require water quality control measures is not included in the current draft SED. The Proposed Provisions recommend that the Board adopt the Tribal Tradition and Cultural Beneficial Use now with Regional Boards later doing site-specific studies to determine what tribal uses will require new water quality objectives.

This approach is problematic for two reasons. First, without an exhaustive list of cultural, spiritual, ceremonial, and traditional rights and/or lifeways there can be no consistent application of the beneficial use designation throughout the state. The potential exists for there to be a plethora of uses requiring water quality objectives across the state and even on a single segment of a water body, as there are more than 100 recognized Tribes in California. Moreover, the Proposed Provisions fail to establish the procedures used to determine what is a qualifying use that requires water quality objectives. Thus, one Regional Board may designate a use for protection that another Regional Board may reject.

Second, without consistency throughout the state, and without procedures to establish protected uses, it is impossible to know the potential impacts from the adoption of the Tribal Tradition and Cultural Beneficial Use. For example, there is an outstanding question regarding whether these beneficial uses could result in increased flow regulation. Appendix T includes the following example, “the timing of application of aquatic herbicides so that they do not interfere with cultural practices.” (SED, appen. T at p. T-2.) Additionally, during the January 9, 2017 Staff Workshop, SWB Staff used the example of flow objectives as potentially necessary actions for the reasonable protection of a specific beneficial use. Thus, potential flow regulation is not speculative and the draft SED must be revised to include the analysis of flow impacts as mandated by the CEQA Guidelines

Response: Please see Response to Comment CIEAEtA1-9 regarding designation of Tribal Cultural beneficial uses. Regarding potential impacts, Water Boards would conduct this type of analysis during the public participation process that is required for designation of any water body. Regarding flow objectives, Please see Response to Comment ACWA1-12.

Letter: SJTA1 , Pg5, P3	COMMENT	Excerpt: 17	Type: Guidance
The SJTA recommends Staff revise the SED to establish and include formal guidance on the manner in which the Regional Boards implement the Tribal Tradition and Cultural Beneficial Uses. By proceeding in this manner there will be consistency across the state for protected uses, and regulated entities will have an increased role in the regulatory process. Further analysis and scoping is necessary to identify the uses applicable to the Tribal Tradition and Cultural Beneficial Use in order to comply with CEQA Guidelines’ prior adoption.			
Response: Comment noted. The Staff Report and Substitute Environmental Document contain detailed analysis of the uses applicable to Tribal Tradition and Cultural Beneficial Use in Chapter 2, and detailed analysis of the basis of beneficial uses and the water quality objectives linked to those beneficial uses in Chapters 2, 4, 5, and 6, and in Appendices A, G through M, S, and T. The Staff Report includes an environmental analysis of the reasonably foreseeable methods of compliance with the Provisions. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4); Pub. Resources			

Code, § 21159, subd. (a)). In developing the environmental analysis, the State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance, but the environmental analysis shall (and does) account for a reasonable range of environmental, economic, and technical factors. (Cal. Code Regs., tit. 23, § 3777, subd. (c); Pub. Resources Code, § 21159, subd. (d)). Additionally, Section 6.4.3 of the Staff Report describes the suggested adoption of Tribal Traditional and Cultural beneficial use (CUL) as well as Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) as part of a statewide water quality control plan. Definitions and additional guidance regarding these designations are included in Chapters 5 and 6 and Appendix T of the Staff Report in order to assist Regional Water Quality Control Boards with beneficial use designation for specific water bodies during their basin planning process.

BACWA2**Author:** David R. Williams **Title:** Executive Director **Organization(s):** Bay Area Clean Water Agencies**Address:** [Click here to enter text.](#) **Interest Group:** POTW**Date:** 2/17/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: BACWA2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the Bay Area Clean Water Agencies (BACWA), we thank the State Water Resources Control Board (State Water Board) for the opportunity to comment on the Proposed 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 Mercury Provisions (Beneficial Uses and Mercury Provisions)			
Response: Comment noted.			
Letter: BACWA2 , Pg1, P1	NOT COMMENT	Excerpt: 2	Type: Summary
BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay (SF Bay) Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health. Our member agencies are proud of the work we've been doing to reduce mercury discharges through traditional pretreatment controls and innovative pollution prevention strategies.			
Response: Comment noted.			
Letter: BACWA2 , Pg1, P2	COMMENT	Excerpt: 3	Type: Too Complex
BACWA supports the protection of tribal and subsistence uses. However, we are concerned that implementation requirements for tribal and subsistence beneficial uses will be both onerous and ineffective. As summarized below, most mercury loading to San Francisco Bay and much of Northern California is legacy pollution from the California Gold rush. Decades of mercury source reduction in the modern economy have succeeded in reducing public wastewater treatment facilities to de minimis sources, at best. Meanwhile, mercury concentrations in fish tissue			

Responses to Comments—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 Mercury Provisions.

over the same period have not measurably dropped. It will serve no constructive purpose to establish a water quality goal and implementation plan that cannot succeed.

Response: The San Francisco Bay TMDL and the Sacramento San Joaquin Delta TMDL recognize that on a load basis POTWs that discharge to those waters are relatively low when compared to the very high legacy loads. Appendix N.2 summarizes the data relative to the loading in high mercury loaded environments and other place in the state that are not impacted by legacy mining sources. “From the estimates in Table N-11, atmospheric deposition is not a major source of mercury. In the Sacramento-San Joaquin Delta TMDL, municipal wastewater is more significant than atmospheric deposition. If this information is used to extrapolate relative source contribution to the state as a whole, then for any watershed without historic gold or mercury mining, wastewater and industrial dischargers can be a significant source of mercury” The classification of insignificant discharges applies to discharges determined to be of very low threat to water quality and not just with regards to mercury but with regards to all pollutants. It is not a recognition that municipal discharges are insignificant to the overall mercury loading in any given water body. There are however, exceptions for establishment of effluent limitations if the municipal discharge originates from a POTW that serves a small disadvantage community or if the industrial discharge has been determined to be low threat to water quality. Regarding attainability of objectives, please see Response ACWA1-58 and 262. In addition, the provisions have been modified to include a section on TMDLs. Please see Responses to Comments WSPA2-54, and 61.

Letter: BACWA2 , Pg1, P3 to Pg2, P1	COMMENT	Excerpt: 4	Type: Effluent Limits
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Total mercury loads to the San Francisco Bay are about 920 kg/year, per SFEI’s 2015 estimate, and as reported in their Multi-Year Synthesis Report¹ . Bay Area POTWs have decreased their aggregate loads from 4.5 kg/yr in 2008 to 2.2 kg/yr in 2015 through the implementation of a very successful mercury TMDL, as shown in Figure 1, below. We’ve achieved these reductions largely by the implementation of very successful dental amalgam programs, mercury reduction in hospitals, thermometer exchange programs and many other examples.

Mercury concentrations in rivers draining old mining watersheds near San Jose range from several hundred to tens of thousands of nanograms per liter¹ . In contrast, Hg concentrations in wastewater effluent range from 1 to fifteen nanograms per liter². While BACWA agencies have reduced their inputs of mercury to the Bay more than ten-fold in the last 50 years, concentrations in Bay fish remains the same, as shown in Figure 2, below³ . Even if our member agencies were to cease discharge altogether, concentrations of mercury in fish tissues will not decline any faster, due to the enormous reservoir of mercury-containing sediments already in the Bay and the legacy mining sources upstream. Setting water quality-based effluent limits that do not differentiate between significant and insignificant sources will be tremendously costly and will not have any positive impact on achieving mercury reductions in fish tissues.

Footnote 1: Sources, Pathways and Loadings: Multi-Year Synthesis with a Focus on PCBs and Hg. Prepared by McKee L.J, A.N. Gilbreath, J. A. Hunt, J. Wu, and D. Yee. San Francisco Estuary Institute, Richmond, California. December 15, 2015.

Footnote 2: Per POTW Reporting via the San Francisco Bay Mercury and PCB Watershed Permit

Footnote 3: Contaminant Concentrations in Fish from San Francisco Bay, 2014. SFEI Contribution #806., Sun, J., J.A. Davis, S. N. Bezalel, J.R.M. Ross, A. Wong, R. Fairey, A. Bonnema, D.B. Crane, R. Grace, R. Mayfield, and J. Hobbs. 2017. Regional Monitoring Program for Water Quality in San Francisco Bay, Richmond, CA. In preparation.

[See Figures 1 and 2]

Response: Please see Response to CVCWA1-7 regarding other sources.

The Staff report recognized that point sources such as POTWs are generally relatively minor sources of mercury to the environment compared to other sources where they are impacted by legacy mining sources. However, the Staff Report, Section 6.12.2, page 143 also points out that there is a wide range of mercury removal efficiency. There is no certainty that the mercury discharged from every discharge is insignificant, it would be appropriate to evaluate and determine the significance of mercury discharges from all NPDES sources and the use of water column values translated from a peer reviewed BAF is an adequate approach. It is important to ensure receiving waters attain water quality objectives. Therefore, it is appropriate to control possible point sources including NPDES Permittees. Finally, the discharges to waterbodies with mercury TMDLs are not subject to these provisions. Should those water bodies be designated with SUB or T-SUB in the future the Water Boards should reevaluate the TMDL and adjust allocations and the time schedule to attain the beneficial uses as appropriate. It is likely that the assumptions behind the allocation is still sound and the regional board could rely upon them for extending the TMDL compliance schedule or provision appropriate adjustment to the allocations. Also, Please see Response to Comment ACWA1-220.

Additionally, Please see Responses to Comments ACWA1-105,106, 107, and 114 regarding economic analysis of Effluent Limitations.

Letter: BACWA2 , Pg3, P1	COMMENT	Excerpt: 5	Type: Effluent Limits
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While BACWA appreciates that the implementation requirements in the staff report explicitly carve out existing TMDLs, our members are concerned that these new beneficial uses may have the unintended consequence of forcing a reopening of the SF Bay Mercury TMDL. Very few of our members would be able to meet the extremely low water quality-based effluent limits that would be calculated from water quality objectives associated with the new beneficial uses. Even with advanced treatment, there is no guarantee that agencies would be able to achieve mercury concentrations below 1 ng/L since most agencies have already optimized their pollution prevention alternatives under the current TMDL. In response to such low effluent limits, agencies would also need to stop accepting reverse osmosis concentrate from current and future water recycling projects, since this by-product will increase the mercury concentrations in POTW effluent, although it would not increase loads to the Bay.

Response: Please see Response to Comment WSPA2-26. In addition, language has been added to the provisions that recognizes that the appropriate regulatory action to take when a water is newly designated for T-SUB or SUB, and an existing mercury TMDL is in place that is designed to attain the COMM, WILD, or RARE beneficial uses is to rely upon the information and analysis of the existing TMDL, to the extent is still applicable. In addition, the new language explicitly states where the assumptions underlying the allocations and scientific basis remains valid that the appropriate action would be to consider extending the final compliance date into the future rather than require additional actions or lowering existing allocations.

Letter: BACWA2 , Pg3, P2	COMMENT	Excerpt: 6	Type: Too Complex
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BACWA is concerned that by adopting the proposed provisions, the Water Board may be making a decision that would unintentionally lead to the reallocation of resources away from more pressing issues (e.g. such as repairing aging infrastructure to control SSOs, preparing for sea level

rise, studying effects of nutrients and potential technologies for reducing nutrient loads, and planning resource recovery projects) to efforts focused on controlling mercury to levels that would have a negligible effect on water quality in the SF Bay ecosystem. While it may be possible to implement regulatory “fixes” to avoid these unintended consequences such as variances, BACWA believes that the State Water Board shares our goal to get the regulation right from the get-go.			
Response: Regarding the necessity of the Provisions, Please see Response to Comment WSPA2-3.			
Letter: BACWA2 , Pg4, P1	COMMENT	Excerpt: 7	Type: Other CEC
BACWA is further concerned that State Water Board has not provided analysis of other constituents, such as selenium or PCBs that may be impacted by the proposed Beneficial Uses.			
Response: Regarding other constituents (or pollutants), Please see Response to Comment WSPA2-20.			
Letter: BACWA2 , Pg4, P1	COMMENT	Excerpt: 8	Type: Too Complex
Additionally, if the Tribal Cultural Beneficial Use is interpreted to include fish quantity, there may be significant unintended regulatory consequences that limit water recycling in the future, if a recycled water project reduces freshwater inputs into water bodies.			
Response: Regarding discharges from recycled water production facilities and the objectives, Please see Response to Comment ACWA1-11. Regarding fish quantities, Please see Appendix T, Question 1.			
Letter: BACWA2 , Pg4, P2	COMMENT	Excerpt: 9	Type: Comment Letter Support
BACWA supports the comments provided by the Summit Partners, including recommendations on language for a State Water Board adoption resolution. We hope these changes will be incorporated to the proposed Beneficial Uses and Mercury Provisions, so that the implementation requirements do not unfairly burden insignificant sources of mercury such as POTWs, but will be targeted towards actions that would have a meaningful impact in reducing mercury in the water environment.			
Response: Comment noted.			
Letter: BACWA2 , Pg4, P3	NOT COMMENT	Excerpt: 10	Type: Greet/Ending
Please let us know if you would like to discuss our comments and recommendations in more detail.			
Response: Comment noted.			

CCEEB2**Author:** Gerald D. Secundy **Title:** CCEEB President **Organization(s):** California Council for Environmental and Economic Balance**Address:** 101 Mission Street, Suite 1440, San Francisco, California 94105 **Interest Group:** INDUSTRY**Date:** 2/17/2017**Contact person:** Dawn Koepke , Susan Paulsen **Phone:** (916)930-1993, (626)204-4089 **E-mail:** [Click here to enter text.](#)

Letter: CCEEB2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the California Council for Environmental & Economic Balance (CCEEB), we appreciate consideration of the following comments regarding the proposed Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives under the Inland Surface Waters, Enclosed Bays & Estuaries Plan released January 4, 2017 for public review and comment (“Mercury WQO,” “Beneficial Uses” and/or “Staff Report”).			
Response: Comment noted.			
Letter: CCEEB2 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary
CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.			
Response: Comment noted.			
Letter: CCEEB2 , Pg1, P3	COMMENT	Excerpt: 3	Type: Guidance
As currently proposed, the State Water Resources Control Board (SWRCB) draft policy is intended to establish new three beneficial uses associated with tribal traditional and cultural use, tribal subsistence fishing and subsistence fishing; mercury water quality objectives (WQO) to protect human health and aquatic dependent wildlife; and an implementation program to control mercury discharges throughout the state. This approach is slated to be adopted by June 30, 2017, in line with the US EPA’s Consent Decree for mercury water quality criteria for aquatic life and aquatic-dependent wildlife.			
While CCEEB appreciates that these issues have been under discussion for a number of years, we are concerned the current proposal would have significant, widespread ramifications for all dischargers in the state. Further, although the new Beneficial Uses are being proposed in conjunction with the Mercury WQOs, they will have impact on a host of other contaminants for which permit thresholds will be established			

and/or significantly decreased. Although staff and Board members have attempted to reassure the regulated community that the new Beneficial Uses would not become effective until a regional board designates specific water bodies as part of their Basin Plan amendment process, the Board and staff have thus far declined to develop clear guidance on the site specific factors that should be considered in designating uses, and criteria for Mercury, not to mention the other contaminants that will be tied to their use.			
Response: Regarding contaminants besides mercury/methylmercury, Please see Response to Comment WSPA2-20. Regarding guidance to the Regional Water Boards, Please see Responses to Comments WSPA2-8, and 34 and CVCQA1-36.			
Letter: CCEEB2, Pg2, P1	NOT COMMENT	Excerpt: 4	Type: Support
Suction Dredge Mining While CCEEB has a number of concerns with the proposed provisions, we support the Staff Report recommendation (page 363) to prohibit suction dredge mining in mercury impaired waters or up stream of impaired waters. As you know, under SB 637 (2015), the SWRCB is required to issue WDRs for suction dredge and mining and related mining activities. Further, this law requires the SWRCB to establish a permitting process for suction dredge mining and related mining activities in rivers and stream in the state by July 1, 2017. We strongly support the recommendation that if the State Board develops a permit for suction dredge mining, any such permits should consider prohibiting suction dredge mining in mercury impaired waters or up stream of impaired waters.			
Response: Thank you for your support on this issue.			
Letter: CCEEB2, Pg2, P2-3	COMMENT	Excerpt: 5	Type: Request: More Time
Schedule & Bifurcation Request Notwithstanding the concerns CCEEB has with the proposal, we appreciate the need to protect waters throughout the state for tribal and subsistence fishing purposes where those uses have historically existed. Additionally, we acknowledge the challenges associated with the timing of the Consent Decree that are driving the state to adopt the Mercury WQOs for wildlife. We remain concerned, however, that the current Board schedule will drastically decrease the opportunity for meaningful engagement by stakeholders. The Staff Report raises a host of questions and concerns that indicate widespread impact on all dischargers in the state, yet we have had a mere 45 days to review, digest, formulate comments and craft solutions on over 700 pages of the Staff Report and technical supporting documents, both of which provide new information that has not previously been discussed in stakeholder meetings.			
Response: Please see Response to Comment WSPA2-18.			
Letter: CCEEB2, Pg2, P4	COMMENT	Excerpt: 6	Type: Split the Project
[Schedule & Bifurcation Request (Continued)] As noted in our prior letter, we do not object to having the Mercury provisions move forward in line with the Consent Decree timeline. We continue, however, to urge the Board to bifurcate the Mercury provisions for wildlife from the Beneficial Uses so as to provide time for more robust discussion and an opportunity to work with the Board and staff to ameliorate the related concerns and broad impacts. This time would provide the opportunity to work with the Board and staff to make adjustments to the proposal and develop clear guidance for regional boards to utilize in designating waters in a consistent, clear manner across the state.			
Response: Please see Responses to Comments WSPA2-2, and 3.			

Letter: CCEEB2, Pg2, P5	COMMENT	Excerpt: 7	Type: Point/Non-point
<p>Point vs. Non-Point Sources</p> <p>CCEEB is highly concerned that the proposed provisions focus Mercury reductions on municipal and industrial dischargers despite the Staff Report’s own admission that point sources are but a minor contributor as compared with other non-point sources. As a matter of fact, it clearly indicates that non-point sources provide the largest loading for mercury into state waters. More specifically, the Staff Report notes the following:</p> <p style="padding-left: 40px;">“Even if all sources of the contaminants are eliminated, the contaminants are likely to remain high for decades, because either they do not degrade or they degrade very slowly. Much of the mercury in fish today is thought to be from historic mining in the late 19th century and early 20th century. Further, current sources may not be directly regulated by water boards (e.g., atmospheric emissions, naturally occurring in soils, or geothermal sources)” (page 108).</p> <p>As such, it’s not clear why the provisions seek to impose stringent numeric limitations on point sources when they will have little, if any, effect on mercury concentrations in fish and the environment. Such an approach raises the question about whether this is arbitrary and capricious and an abuse of discretion. In this regard, we urge the Board to only include requirements in the implementation program that are commensurate to the significance of the discharges such that it would acknowledge there may be situations where potable water, industrial and municipal discharges are considered de minimis discharges. As such, the proposed water column concentrations (see further discussion below) may not be applicable for setting effluent limits for most potable water, industrial, and municipal stormwater discharge permits. Additionally, the provisions should be revised to address the major sources of Mercury identified in the Staff Report, including abandoned mines.</p> <p>Response: Please see Responses to Comments CVCWA1-25, and 57.</p>			
Letter: CCEEB2, Pg3, P3	COMMENT	Excerpt: 8	Type: TMDLs
<p>TMDLs</p> <p>As part of the Staff Report appendices, source analysis data reaffirms earlier indications that POTW and industrial dischargers are not a significant source of mercury in regions with Mercury TMDLs. More specifically, the Staff Report indicates:</p> <ul style="list-style-type: none"> - Only three of the seven Mercury TMDLs in California reference POTW and industrial dischargers as potential sources of mercury; and - Of the three Mercury TMDLs, two quantify such POTW and industrial discharges at (4% and 1.5%, respectively). <p>A common theme throughout the Staff Report is that the primary sources of mercury in the environment tie back to historical mining, aerial deposition, tributaries and runoff.</p> <p>Additionally, although SWRCB staff has previously indicated that the Mercury WQOs would not impact basins or water bodies that have established TMDLs with WQOs and waste load allocations (WLA), we must respectfully disagree. To the extent a regional board moves to designate a particular water body with one of the new Beneficial Uses, it would have to reopen the TMDL and WLAs to incorporate the new</p>			

<p>Mercury WQOs associated with those new Beneficial Uses. In addition, the regional boards would be obligated to reopen TMDLs for other pollutants when the subsistence and tribal subsistence fishing uses are designated, in order to recognize the higher fish consumption rates that occur with those uses. We firmly believe all regional boards will move to assign these new Beneficial Uses once they are established by the State Board.</p>			
<p>Response: Please see Responses to Comments WSPA2-27, and 29.</p>			
Letter: CCEEB2 , Pg4, P1	COMMENT	Excerpt: 9	Type: Attainability
<p>Water Column Concentrations</p> <p>While the Tribal Subsistence Fishing (T-SUB) use has numeric objective set at 0.04 mg/kg, the Subsistence Fishing (SUB) is proposed as a narrative objective subject to regional board site-specific consumption pattern determinations. The Staff Report provides for the development of water column concentration targets. For the T-SUB beneficial use, these targets are set at 4ng/L or as low as 1 ng/L, while for the SUB beneficial use, these values would be the default values unless site-specific information is available. As an example, this approach would subject some Bay Area dischargers to permit limits that would be 20-30 times more restrictive than current permit limits. Further, these values will be almost entirely unachievable and will be extremely expensive. Most importantly, meeting these objectives would result in little or no change in mercury concentrations in the aquatic environment, in fish or in aquatic-dependent wildlife. As noted above and in the Staff Report, other non-point sources are the primary drivers. Even rain water has median and mean mercury concentrations of 6 and 12 ng/L, respectively. Lowering the threshold to 4 ng/L or as low as 1 ng/L will be a significant adjustment that will be incredibly problematic and costly for dischargers across the state.</p> <p>CCEEB is concerned about placing such a significant burden on point sources when regulating them based on these numeric values will have no commensurate benefit</p>			
<p>Response: Please see Response to Comment WSPA2-54.</p>			
Letter: CCEEB2 , Pg4, P3	COMMENT	Excerpt: 10	Type: BAFs
<p>Bioaccumulation Factors CCEEB is also concerned with the proposed approach that derives the water column concentrations from the bioaccumulation factors (BAF) and translators. The use of this methodology that focuses on national average BAF values for lakes and rivers is inappropriate for most sites. BAFs differ in magnitude across different sites and as such should be based on site-specific data, as factors including flow, fish characteristics, chemistry and more affect BAF values at individual sites.</p> <p>Mercury behavior in the environment is complex and site-specific. The approach contemplated in the Staff Report fails to account for site-specific factors. Instead, CCEEB urges the Board to consider using site-specific information to determine the values rather than set default values.</p>			
<p>Response: Please see Response to Comment WSPA2-77.</p>			
Letter: CCEEB2 , Pg4, P5	COMMENT	Excerpt: 11	Type: Numeric Action Levels
<p>Numeric Action Levels</p>			

<p>As you know, the stormwater Industrial General Permit (IGP) subjects permittees to Numeric Action Levels (NAL) for a number of contaminants, including mercury, with the annual NALs being specifically established as the 2008 EPA Multi-Sector General Permit (MSGP) benchmark values. Currently under the IGP, total mercury is set at 1,400 ng/L.</p>			
<p>Although the Staff Report suggests the “provisions would not impose any new requirements,” (p.10) the provisions will in fact subject permittees to new significant, burdensome requirements by lowering the current NAL for Mercury to a much more stringent level of 300 ng/L. Although Appendix R acknowledges that current industrial facility control measures may not be sufficient to meet the revised NAL (at p. R-40), it fails to describe the treatment controls that would be required to meet the new NAL.</p>			
<p>Response: Since the proposed 300 ng/L is a Numeric Action Level (NAL), exceeding that concentration is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Response Actions (ERA) if the NAL were exceeded. In the ERA process, there are multiple options dischargers can take to reduce the amount of mercury being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source. Such action would relieve them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they are already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process has already been established and is available to dischargers who are regulated by the IGP. This is why the Staff Report suggests the “provisions would not impose any new requirements”. In addition, Please see Response to Comment ACWA1-147.</p>			
Letter: CCEEB2, Pg5, P1	COMMENT	Excerpt: 12	Type: Numeric Action Levels
<p>[Numeric Action Levels (Continued)]</p> <p>Not only is this ratcheting down concerning, it inappropriately compares the use of a benchmark to a water quality criterion despite the fact that the two numbers have very different purposes. The SWRCB’s proposed approach would seemingly compromise the IGP framework and use of the EPA MSGP benchmark values to gauge the performance of a permittee’s pollutant control efforts. In this regard, we strongly urge the Board to retain the current IGP benchmarks.</p>			
<p>Response: The proposed Numeric Action Level (NAL) will not act any differently than the current NALs in the permit. The proposed value is not water-quality based or technology based. It is based on the lowest detection level of the analysis method that would be most economical for Dischargers. Some of the 2008 MSGP Benchmarks were developed in a similar way (see Federal Register, Vol 60, No.189, Table 5).</p>			
Letter: CCEEB2, Pg5, P2	COMMENT	Excerpt: 13	Type: Numeric Action Levels
<p>[Numeric Action Levels (Continued)]</p> <p>Finally, the Staff Report provides no analysis of the economic impacts associated with the lowering of the NAL applicable to industrial facilities. We urge the Board to undertake such an analysis prior to moving forward with the provisions.</p>			
<p>Response: The NAL is not a water quality objective and as such the Board is not required to include an economic analysis. However, the Staff Report includes a discussion on the rationale for lowering the NAL in Sections 6.11 and 7.2.6 as well as Appendix P.2.</p>			
Letter: CCEEB2, Pg5, P3	COMMENT	Excerpt: 14	Type: Attainability
<p>Attainability</p>			

The Staff Report acknowledges that effluent limitations may be imposed in NPDES permits even before the SUB and T-SUB uses are designated by regional boards (Staff Report at p. 11), and permittees will be responsible for implementing measures to meet the numeric thresholds identified in the Staff Report as protective of the new beneficial uses. The proposal may also result in a ratcheting down of receiving water limitations and/or total maximum daily waste load allocations. Compliance is almost always impossible for stormwater permittees as the primary sources are outside of their control. Nevertheless, the provisions in the Staff Report seek to impose stringent requirements on dischargers for pollutants for which they, by staff's own admission within the report, are not responsible. This is particularly concerning given the Staff Report's indication that 33-75% of all point source dischargers in California would not be able to meet the mercury WQOs, depending on which effluent limitation is imposed. Although the only pollutant discussed in these provisions is mercury, the impacts of the new Beneficial Uses will be widespread and will apply to far more persistent, bioaccumulative pollutants where the considerations, challenges and impossibility of attainment with associated numeric values are expected to be similar.

California Water Code § 13241 provides that the SWRCB must consider a number of factors, including the "(c) water quality conditions that could be reasonably attained through coordinated control of all factors affecting water quality." Additionally, California Water Code § 13050 requires that the water quality control plans identify the (1) beneficial uses to be protected; (2) water quality objectives; and (3) a program of implementation needed for achieving water quality objectives. Unfortunately, the Staff Report lacks clear direction for reasonably achieving the proposed objectives. Case in point, the Staff Report notes:

"...it may take a significant period of time to attain the objectives by implementing the mercury controls in the Provisions and developing and implementing other water quality control programs, such as TMDLs. Additionally, the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective may be very difficult to achieve in most waters as discussed in Section 6.5" (page 264).

In order for the SWRCB to meet its obligation under the Water code, the provisions should be revised to provide clear direction and acceptable implementation options that would lead toward reasonable attainment. Absent such revisions, the imposition of costly treatment requirements on dischargers without commensurate environmental benefits fails to sufficiently evaluate the economic impacts as called for under Water Code § 13241 deeming it unreasonable, an abuse of discretion and quite possibly arbitrary and capricious.

Not only does California law speak to attainability, Federal regulations under 40 C.F.R., 131.10(g) require states to undertake a use attainability analysis (UAA) when states designate uses that do not include the uses specified in section 101(a)(2) of the Clean Water Act (CWA). The SWRCB's proposed provisions go beyond those specified in section 101(a)(2) and therefore any designation of these new Beneficial Uses requires the regional boards to conduct a UAA first.

The Staff Report, however, does not acknowledge such federal requirements and instead suggests there are no parameters which regional boards must review and evaluate when considering designation under such new Beneficial Uses (p.111). As a matter of fact, the Staff Report

goes as far as supporting designation as a goal “...where neither the water quality is currently being attained or the use is actually occurring...” (p.112). This clearly conflicts with federal requirements and inappropriately provides regional boards with guidance on adopting new beneficial uses where they do not exist and are not reasonably achievable.

CCEEB strongly urges revision of the Staff Report to rectify the inconsistencies within the proposed provisions between state and federal law.

Response: Regarding compliance for storm water permittees, please see Response to Comment CASQA2-22. Regarding the stringency of the Provisions, please see Response to Comment WSPA2-54. Regarding the evaluation of economic benefits under Cal. Wat. Code §13241, please see Response to Comment WSPA2-6. Regarding the claim that the Provisions implement requirements that are “quite possibly arbitrary and capricious”, please see Response to Comment WSPA2-21. Regarding consideration of § 13241(c), please see Response to Comments CVCWA1-40, ACWA1-15, 16, 67, and Section 10.1.3 of the Staff Report. Regarding Use Attainability Analyses, please see Responses to Comments CVCWA1-7, 37, and WSPA2-7. Regarding guidance to the Regional Boards, please see Responses to Comments WSPA2-8, 34, and CVCWA1-36. Regarding adopting new beneficial uses where Commenter claims they “do not exist and are not reasonably achievable,” please see Responses to Comments WSPA2-7, 8, 36, CVCWA1-7, and 37.

Letter: CCEEB2 , Pg6, P5	COMMENT	Excerpt: 15	Type: Reservoirs
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Reservoir Program
 The Staff Report provides, “[m]any methods of compliance for the Provisions could be similar to those required for the [State’s Mercury Program for Reservoirs] ... including sediment controls, possible wastewater treatment plant upgrades, and mercury monitoring.” The Staff Report’s provisions should be integrated with the Reservoir Program, such that water agencies with multiple discharges and operations understand their compliance obligations under separate but interlinked statewide mercury programs.

Response: Please see Response to Comment ACWA1-180.

Letter: CCEEB2 , Pg6, P6	COMMENT	Excerpt: 16	Type: Guidance
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Beneficial Use Designation
 Guidance In designating water bodies with the new Beneficial Uses, CCEEB understands that each regional board will ultimately have the responsibility for identifying the beneficial uses for their own Basin Plan amendment. Given the significant concerns raised in this letter and others yet to be understood with the impacts being far broader than lead, however, it is critical for the SWRCB to provide more guidance as to how these beneficial uses are identified. We fully acknowledge and share in the importance that Native American tribal members have towards the value and importance of waterways for both ceremonial and subsistence consideration, and as such we are concerned that there is no uniformed process to identify these areas in a fair and equitable way for each region. This same consideration should apply for subsistence users. This consistency must also have some clear basis so that it does not place undue hardship on other users of these reaches and does not impact potential alternative uses of this water for reuse for potable or other purposes. It is with this frame of reference we would suggest the State Board staff put in place specific steps in this policy that regional board staff would follow in designating a water body for these beneficial uses. These steps could include setting quantifiable parameters that would be used before an area is designated. For tribal uses it could be something such as clearly identifying the state or federal tribal group that is currently using or would like to return to the area for their benefit,

some level of documentation (photos, oral or written records) of past use to ensure that the area is clearly delineated. For subsistence uses, there should be some basis of a minimal threshold for use such as 1% of the population in the watershed before the area is considered for designation.

In developing this guidance, the regulated community and broader interested stakeholder should be engaged to help ensure consistent application based on sitespecific considerations, regional beneficial use determinations, a minimum data set, clear data standards, and attainability. Such guidance should be developed prior to regional boards moving to designate waterbodies with these new Beneficial Uses and prior to the implementation of associated water quality objectives so as to solidify consistent evaluation, review and application of the new Beneficial Uses by regional boards. CCEEB strongly believes that by the State providing the leadership in setting some consistent and quantifiable basis for these designations, it will ensure a consistent approach across all regions.

Response: Please see Responses to Comments WSPA2-8, 34 and CVCWQ1-36.

Letter: CCEEB2 , Pg7, P2	NOT COMMENT	Excerpt: 17	Type: Greet/Ending
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We appreciate your consideration of these comments. If you have any questions regarding the points highlighted in this letter, please contact CCEEB Water, Chemistry and Waste Project Manager Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993 or CCEEB Water Quality Task Force Consultant Susan Paulsen at (626) 204-4089. Thank you.

Response: Thank you.

SCADA1**Author:** Greg Pirnik **Title:** President **Organization(s):** State of California Auto Dismantlers Association**Address:** [Click here to enter text.](#) **Interest Group:** INDUSTRY**Date:** 2/17/2017**Contact person:** Dawn Koepke **Phone:** (916)930-1993 **E-mail:** [Click here to enter text.](#)

Letter: SCADA1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the State of California Auto Dismantlers Association (SCADA), I appreciate the opportunity to review and provide comments on the State Water Resources Control Board’s (SWRCB) Proposed Mercury Water Quality Objectives and Tribal, Tribal Cultural and Subsistence Beneficial Uses for inclusion in the Inland Surface Waters, Enclosed Bays & Estuaries Plan.			
Response: Thank you for your comment.			
Letter: SCADA1 , Pg1, P2-3	NOT COMMENT	Excerpt: 2	Type: Summary
The State of California Auto Dismantlers Association (SCADA) is the statewide trade association for the professional auto dismantling and recycling industry with approximately 200 members within 6 local chapters and Direct Membership Areas. SCADA was founded in 1959 to serve the members with education, regulatory, and business activities. Our members are recycling facilities that sell used vehicle parts under Standard Industrial Classification (SIC) Code 5015.			
Licensed auto dismantlers provide an essential service that directly addresses society’s ever increasing problem of what to do with end-of-life vehicles (ELVs). An estimated 1.3 million vehicles will reach the end of their useful lives this year in California, either by determination of their owners or by being declared a total loss by an insurance company. While those vehicles might otherwise end up on the roadside or abandoned in empty lots, licensed dismantlers acquire them and safely convert them into reusable/recycled commodities. This dismantling is done in partnership with other state agency programs that support the recycling of vehicles, thereby abating the severe environmental hazards associated with improperly disposed vehicles.			
Response: Comment noted.			
Letter: SCADA1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Description of Reg
Under the development and program of implementation proposed for the Mercury Water Quality Objectives, we note the requirement for			

Responses to Comments—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 Mercury Provisions.

Municipal Separate Storm Sewer Systems (MS4s) to focus on mercury pollution prevention efforts with a specific mention of educating auto dismantlers in the proper disposal of mercury switches. More specifically, the Provisions require MS4s to educate auto dismantlers on the proper removal, storage, and disposal of mercury containing switches in automobiles through onsite training and educational materials provided via mail or electronically. Further, as noted in the staff report, products containing mercury such as thermometers, light bulbs, batteries and switches in motor vehicles are classified as universal waste. Under such classification, they require special handling.			
Response: The Provisions do not require “onsite training and educational materials provided via mail or electronically.” The Staff Report only indicates, “Staff from MS4s may travel to auto dismantlers to provide training on the proper disposal of mercury containing items.” This language is not in the Provisions Chapter IV.D.3.b. of the proposed Mercury Policy.			
Letter: SCADA1 , Pg2, P1	NOT COMMENT	Excerpt: 4	Type: General Information
In 2001, Governor Gray Davis signed the Mercury Reduction Act of 2001 under SB 633 (Sher, 2001) that addresses several approaches to reducing mercury in California. Among other things, it encouraged the removal and recovery of switches containing mercury, i.e., convenience lights under the hood or in the trunk, from vehicles before disposal or recycling of the vehicle. Additionally, it banned the sale of vehicles in California manufactured on or after January 1, 2005, if they have light switches containing mercury. While such a ban is in place, auto dismantlers will be required to continue to properly manage mercury switches as older vehicles still containing them remain in circulation. Since 2006, 576 licensed auto dismantlers have participated in the program resulting in 2,714 pounds of mercury being collected and recycled. ¹ This is mercury that would have otherwise gone into the environment.			
Response: Comment noted.			
Letter: SCADA1 , Pg2, P2	NOT COMMENT	Excerpt: 5	Type: General Information
Also as you may know, for years SCADA has worked collaboratively with the Department of Toxic Substances Control (DTSC) on the removal and proper management of mercury switches in end of life vehicles. DTSC worked closely with State of California Auto Dismantlers Association (SCADA) in developing the universal waste management standards for automotive mercury switches and partnered with SCADA to establish programs to facilitate the collection, proper management, and recycling of mercury switches removed from end-of-life vehicles. More specifically, in 2003 DTSC adopted the “Mercury Waste Classification and Management regulations.” The regulations cleared up the rules for people who handle mercury switches removed from vehicles, and changed the rules for people who dismantle and recycle vehicles. As of January 1, 2005, a vehicle with a mercury switch is considered hazardous waste as soon as someone decides to crush, bale, shred, or shear it. Failure to remove the mercury switches before crushing or shredding a car is a violation of current law and enforceable by the state.			
Response: Comment noted.			
Letter: SCADA1 , Pg2, P3	NOT COMMENT	Excerpt: 6	Type: General Information
In an effort to provide guidance to auto dismantlers, DTSC has prepared resources that provide information on identifying, removal of, proper transport, record keeping, spill management, exposure and more. Please see the attachments for more information.			
Response: Comment noted.			
Letter: SCADA1 , Pg2, P4	NOT COMMENT	Excerpt: 7	Type: General Support
All in all, SCADA members support responsible recycling, worker safety, and environmental protection. We promote the proper handling and			

Responses to Comments—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 Mercury Provisions.

disposal of all automotive-related hazardous materials, including mercury switches.			
Response: Comment noted.			
Letter: SCADA1 , Pg2, P5	COMMENT	Excerpt: 8	Type: Economics
All of this said, we have serious concerns about the proposed Mercury Water Quality Objectives and new beneficial uses. The proposal could have significant negative consequences on auto dismantlers who are already struggling to stay in business and be compliant with current laws, regulations and permit requirements.			
Response: Water Quality Objectives and beneficial uses are implemented through discharge effluent limitations in the Permit or Waste Discharge Requirements. The proposed Mercury Policy for municipal storm water discharge (see Staff Report Provision Chapter IV.D3.) does not require MS4 permits to include effluent limitation. The water quality objective in MS4 permits are implemented through best management practices such as public education, savvy handling of mercury containing wastes, etc. If auto dismantlers are already cooperating with the DTSC in proper handling and recycling of mercury containing products, there is no additional burden on auto dismantlers.			
Letter: SCADA1 , Pg3, P1	COMMENT	Excerpt: 9	Type: Numeric Action Level
Under the Mercury Water Quality Objectives, the provisions would lower the numeric action level (NAL) for mercury contained in the NPDES Industrial General Permit from 1400 ng/L to 300 ng/L or lower. While the Industrial General Permit (IGP) requires that if the NAL is exceeded the permittee must take to address the source of the mercury, such Exceedance Response Actions (ERA) are costly for auto dismantlers who operate on very thin margins. Further, regional boards designating water bodies throughout the state with the new beneficial uses will result in lowering of other contaminant thresholds as well that will be similarly difficult for auto dismantlers to meet. Consistently meeting the current NALs is challenging enough and has resulted in the need to install extremely expensive stormwater filtration and treatment systems that are not economically achievable for most dismantlers. Lowering thresholds further for any constituents would be devastating for these businesses who would be required to conduct additional sampling, BMPs, installation of yet another level of costly equipment and more – all of which cost additional resources that they are not able to sustain.			
Response: Since the proposed 300ng/L is a Numeric Action Level (NAL), exceeding that concentration is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Response Actions (ERA) if the NAL is exceeded. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process is available to Dischargers now therefore no new requirements are being added. With auto dismantling, some simple source controls can be quite effective (i.e. Removing mercury switches responsibly so that no mercury is released.			
Letter: SCADA1 , Pg3, P2	COMMENT	Excerpt: 10	Type: General Concerns
We are concerned that the continued escalation of costs on SCADA members – the good actors in the industry – will further cripple the professional auto dismantling industry in California, drive smaller operations out of business, force more dismantlers underground as illegal operators, and ultimately threaten water resources since fewer vehicles will be properly processed.			
Response: Comment noted; however, it is not in the purview of the Water Boards to address those costs to the industry beyond the scope of			

Responses to Comments—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 Mercury Provisions.

the Water Boards' mission.			
Letter: SCADA1 , Pg3, P3	NOT COMMENT	Excerpt: 11	Type: Greet/Ending
SCADA appreciates your consideration of these comments and looks forward to further dialogue on the handling of mercury switches in the auto dismantling industry and to address the very real, significant challenges the industry continues to face in the state. If you have any questions, please contact Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.			
Response: Comment noted.			

SDCity1

Author: Paz Gomez, PE, CEM, GBE **Title:** Deputy Chief Operating Officer, Infrastructure/Public Works **Organization(s):** The City of San Diego

Address: [Click here to enter text.](#) **Interest Group:** STORM

Date: 2/17/2017

Contact person: Carolyn Ginno, Ruth Kolb **Phone:** (858)654-4286, (858)541-4328 **E-mail:** cginno@sandiego.gov, rkolb@sandiego.gov

Letter: SDCity1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
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).			
Response: Comment noted.			
Letter: SDCity1, Pg1, P1	COMMENT	Excerpt: 2	Type: Support
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.			
Response: Comment noted.			
Letter: SDCity1, Pg1, P1	NOT COMMENT	Excerpt: 3	Type: General Information
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.			
Response: Comment noted.			
Letter: SDCity1, Pg1, P2	COMMENT	Excerpt: 4	Type: De Minimis
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.			
Response: Please see Response to Comment WSPA2-22			

Responses to Comments—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 Mercury Provisions.

Letter: SDCity1 , Pg1, P2	COMMENT	Excerpt: 5	Type: Attainability
<p>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.</p>			
<p>Response: As indicated in the draft Staff Report, study has shown that the pollution prevention and source control are potentially effective in achieving sufficient reductions to enable POTWs to meet effluent limits that are 7.8 ng/L or lower. And many POTWs have installed tertiary treatment since the implementation of California Toxic Rule and the Policy for implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (or SIP). Furthermore, the more stringent numerical water quality objectives are only applicable to flowing water bodies with T-SUB beneficial use and without mercury TMDL. Regarding storm water, please see Response to Comment CASQA2-22. Additionally, please see Responses to Comments ACWA1-147 and 149 for storm water costs and requirements.</p>			
Letter: SDCity1 , Pg1, P3	NOT COMMENT	Excerpt: 6	Type: Summary
<p>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.</p>			
<p>Response: Comment noted.</p>			
Letter: SDCity1 , Pg1, P3	NOT COMMENT	Excerpt: 7	Type: Summary
<p>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</p>			
<p>Response: Comment noted.</p>			
Letter: SDCity1 , Pg2, P1	COMMENT	Excerpt: 8	Type: Summary
<p>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.</p>			
<p>Response: Comment noted. Please see individual Responses to Comments below.</p>			
Letter: SDCity1 , Pg2, P2	COMMENT	Excerpt: 9	Type: Split the Project, Request: More Time
<p>[The City of San Diego, Public Utilities Department comments (continued)]</p>			

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. *1 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.*

Footnote 1: Staff Report, pages 16-18.

Response: Please see Responses to Comments WSPA2-2 and 3 and ACWA1-19.

Letter: SDCity1 , Pg2, P3	COMMENT	Excerpt: 10	Type: Beneficial Uses
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[The City of San Diego, Public Utilities Department comments (continued)]

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, 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," 2 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.*

Footnote 2: Staff Report, Page 11.

Response: Regarding the Regional Boards' role in designating beneficial uses please see Responses to Comment WSPA2-8 and 34. Regarding reservoirs, as well as public outreach regarding reservoir designation, please see Response to Comment MerCID1-7.

Letter: SDCity1 , Pg3, P3	COMMENT	Excerpt: 11	Type: Beneficial Uses
[The City of San Diego, Public Utilities Department comments (continued)]			
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." <i>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.</i>			
The word "generally" is purposefully used to account for application of Clean Water Act "existing use" during the permitting process. Please see, page 11, 22, 109 and 110 of the Staff Report.			
Letter: SDCity1 , Pg3, P4	COMMENT	Excerpt: 12	Type: Water Quality Objectives
[The City of San Diego, Public Utilities Department comments (continued)]			

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

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.³ 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.*

Footnote 3: Staff Report, Page 11.

Response: Please see Responses to Comments WSPA2-38, and ACWA1-48.

Letter: **SDCity1**, Pg4, P4-5

COMMENT

Excerpt: 13

Type: Beneficial Uses

[The City of San Diego, Public Utilities Department comments (continued)]

1. 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."⁴ 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))."⁵

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 context of when, if ever, a reservoir could be deemed to meet the criteria for an "existing" use.

Footnote 4: Staff Report, 111.

Footnote 5: Staff Report, page 22, 79

Response: Please see Response to Comment WSPA2-38.

Letter: SDCity1 , Pg4, P5	COMMENT	Excerpt: 14	Type: Too Complex
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[The City of San Diego, Public Utilities Department comments (continued)]
 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. 6 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.

Footnote 6: 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?

Response: Regarding consideration of coordinated control factors as per 13241(c), Please see the Staff Report Section 10.1.3 and Responses to

Comments CVCWA1-40 and ACWA1-15, 16 and 67. Regarding water rights, Please see Response to Comment ACWA1-12.			
Letter: SDCity1, Pg5, P1	COMMENT	Excerpt: 15	Type: Beneficial Use
<p>[The City of San Diego, Public Utilities Department comments (continued)] 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."7 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.</p> <p>Footnote 7: Staff Report, page 112.</p>			
Response: Please see Responses to Comments WSPA2-8 and 38.			
Letter: SDCity1, Pg5, P1	COMMENT	Excerpt: 16	Type: Beneficial Uses
<p>[The City of San Diego, Public Utilities Department comments (continued)] <i>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 <u>currently</u> 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.</i></p>			
Response: Regarding guidance for designation of beneficial uses, Please see Response to Comment WSPA2-8. Regarding "designation of water quality objectives", Please see Response to Comment MerCID1-45. Regarding reservoirs, Please see Response to Comment MerCID1-54.			
Letter: SDCity1, Pg6, P1	COMMENT	Excerpt: 17	Type: Beneficial Uses
<p>[The City of San Diego, Public Utilities Department comments (continued)] Finally, the City agrees with the Association of California Water Agencies (Clean Water Act [sic]) 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:</p> <ol style="list-style-type: none"> 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). 			

Responses to Comments—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 Mercury Provisions.

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.			
Response: Regarding flow and fish quantity criteria/objectives, Please see Response to Comment ACWA1-165. Regarding past uses, Please see Response to Comment ACWA1-170. Regarding prohibition of the designation of certain beneficial uses, to do so requires the Water Boards to develop a Use Attainability Analysis to take such action; for discussion of this topic, Please see Response to Comment CVCWA1-37.			
Letter: SDCity1 , Pg6, P2	COMMENT	Excerpt: 18	Type: Economics
[The City of San Diego, Public Utilities Department comments (continued)]			
5. The proposed effluent limits for the T-SUB beneficial use (which may also be used for water bodies designated with SUB ⁸) 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." ⁹ 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." ¹⁰ <i>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.</i>			
Footnote 8: Staff Report, page 246. Footnote 9: Staff Report, page 153. Footnote 10: Staff Report, page 154.			
Response: Regarding burdens to ratepayers and costs to WWTPs, Please see Response to Comment ACWA1-22. Regarding the stringency of the effluent limitations, Please see Response to Comment ACWA1-37.			
Letter: SDCity1 , Pg6, P3	COMMENT	Excerpt: 19	Type: Stormwater
[The City of San Diego, Public Utilities Department comments (continued)]			
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," ¹¹ meaning that for sizable agencies and dischargers, the scope of such a plan could be quite broad. The report goes on to identify various functions that could			

Responses to Comments—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 Mercury Provisions.

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."¹²

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."¹³ *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.*

Footnote 11: Staff Report, page 163.

Footnote 12: Staff Report, page 169.

Footnote 13: Staff Report, page 165.

Response: Commenter's argument that wastewater treatment plants and municipal separate storm sewer system permittees should not be required to reduce the concentrations of mercury in their own discharges presumes that all sources of mercury are from "outside" of the dischargers' systems. It is not clear from the comment how "sources outside of [a discharger's] system such as dental offices, hospitals schools or industrial dischargers" would get into another discharger's system. Under the Provisions, non-storm water NPDES-permitted dischargers are required to comply with effluent limits for the end-of-pipe discharge coming out of their "systems" into a water body. These effluent limits are determined based on, in part, calculations of the background levels of mercury in the receiving water body to which the permittees discharge, but the permittees are still responsible for attainment of the effluent limitations set through that calculation. This is a limit on the mercury that being emitted from the *discharger's* "system". The quoted text from page 169 of the Staff Report refers to sources of mercury to the permittee's sewage or stormwater influent, and it is reasonable that permittees are responsible for treating or mitigating mercury that it receives from its sanitary or storm water sewer system, as is the case with other pollutants regulated by the Clean Water Act. Regarding the variability of atmospheric deposition as a source of mercury to watersheds, please see Response to Comments WSPA2-22. Regarding economic considerations which include costs to dischargers, Please see the Economic Analysis in Appendix R.

Letter: SDCity1 , Pg7, P3	COMMENT	Excerpt: 20	Type: Flow
[The City of San Diego, Public Utilities Department comments (continued)]			
<p>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.</p> <p>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 appropriate water rights¹⁴.</p> <p>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."¹⁵ Enforcement of flow objectives can have real impacts on the use of water for supply purposes. <i>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 of valid consumptive water rights at any state water body designated with one of the new beneficial uses and related water quality objectives.</i></p> <p>Footnote 14: Staff Report, page 104, 108.</p> <p>Footnote 15: Staff Report, page 110.</p>			
Response: Please see Responses to Comments ACWA_CWA-12, and 33.			
Letter: SDCity1 , Pg7, P3 (on page 8)	COMMENT	Excerpt: 21	Type: Flow
[The City of San Diego, Public Utilities Department comments (continued)]			
<p>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.</p>			
Response: Please see Responses to Comments ACWA_CWA-12, and 33.			
Letter: SDCity1 , Pg7, P3 (on page 8)	COMMENT	Excerpt: 22	Type: Flow
[The City of San Diego, Public Utilities Department comments (continued)]			
<p>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.</p>			
Response: Please see Responses to Comments ACWA_CWA-12, and 33.			
Letter: SDCity1 , Pg8, P1-3	COMMENT	Excerpt: 23	Type: Beneficial Uses

[The City of San Diego, Public Utilities Department comments (continued)]

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."¹⁶

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.*

Footnote 16: California Public Resources Code §21074

Response: The State Water Board and Regional Water Boards (collectively Water Boards) strive to coordinate with interested tribes and consider effects to tribal resources in their decision making processes. Assembly Bill 52 (Gatto) took effect on January 1, 2015. AB 52 amends the California Environmental Quality Act (CEQA) in two primary ways. The amendments: (1) Require consideration of potentially significant impacts to tribal cultural resources separately from impacts to archeological and historical resources; and (2) Require a new CEQA consultation process with California Native American tribes that have requested notice of projects in areas traditionally and culturally affiliated with the tribe.

AB 52 is unclear whether the new consultation requirements apply to SEDs. Consistent with Cal/EPA policy and the statutory policy the State Water Board will comply with AB 52's consultation requirements unless those requirements are determined to be inapplicable to certified regulatory programs.

The Water Boards approve or carry out projects that have the potential to affect tribal cultural resources. Examples of potential impacts include the quality of water itself; the overall health of particular water bodies; effects on ceremonial uses of water; access to sacred places; the ability to gather and safely use plants for medicinal, culinary, and cultural purposes (e.g. basket weaving); and the health of fish and other aquatic organisms as part of tribal culture, for spiritual and cultural practices and beliefs, and for consumption.

<p>Within 14 days of determining an application for a project is complete or deciding to undertake a project, a lead agency is required to send at least one written notification to the identified contact person for each California Native American tribe that has requested notice.8 (Pub. Resources Code, § 21080.3.1, subd. (d).) This written notification shall include a brief description of the proposed project, its location, contact information for the lead agency, and a statement that the tribe has 30 days to request consultation. (<i>Ibid.</i>)</p>			
<p>The Staff Report (Chpt. 2.6.6) explains the manner in which the State Water Board satisfied the AB 52 requirements for the Provisions' project.</p>			
Letter: SDCity1 , Pg8, P4	COMMENT	Excerpt: 24	Type: Ocean Plan
<p>[The City of San Diego, Public Utilities Department comments (continued)]</p> <p>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.</p>			
<p>Response: The Provisions is applicable to the Inland Surface Waters, Enclosed Bays and Estuaries Plan. The Provisions is not applicable to the California Ocean Plan, and therefore will not apply to open ocean discharges.</p>			
Letter: SDCity1 , Pg8, P5	COMMENT	Excerpt: 25	Type: SED/CEQA
<p><i>City of San Diego, Transportation & Storm Water Department Overarching Comments:</i></p> <ul style="list-style-type: none"> 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. 			
<p>Response: Please see Responses to Comments WSPA2-4, 5, and 6.</p>			
Letter: SDCity1 , Pg8, P5	COMMENT	Excerpt: 26	Type: Statement of Necessity
<p>[City of San Diego, Transportation & Storm Water Department Overarching Comments (continued)]</p> <ul style="list-style-type: none"> 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. 			
<p>Response: Please see Response to Comment CASQA2-11.</p>			
Letter: SDCity1 , Pg8, P5	COMMENT	Excerpt: 27	Type: Beneficial Uses
<p>[City of San Diego, Transportation & Storm Water Department Overarching Comments (continued)]</p> <ul style="list-style-type: none"> 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. 			
<p>Response: Commenter is correct in that there are no limitations to types of water quality objectives that may apply to the newly proposed beneficial uses in the possible future. However, there are at present no other objectives other than the Mercury Water Quality Objectives that would apply to the new beneficial uses once adopted. In addition, the new beneficial uses and water quality objectives other than the Mercury</p>			

Responses to Comments—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 Mercury Provisions.

Water Quality Objectives would have to be applied through existing basin planning amendment procedures, which require significant stakeholder participation.			
Letter: SDCity1 , Pg8, P5	COMMENT	Excerpt: 28	Type: Guidance
[City of San Diego, Transportation & Storm Water Department Overarching Comments (continued)]			
<ul style="list-style-type: none"> 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. 			
Response: Please see Response to Comments WSPA2-8 and 13.			
Letter: SDCity1 , Pg8, P5	COMMENT	Excerpt: 29	Type: Split the project
[City of San Diego, Transportation & Storm Water Department Overarching Comments (continued)]			
<ul style="list-style-type: none"> 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). 			
Response: Please see Response to Comment WSPA2-3.			
Letter: SDCity1 , Pg8, P5	NOT COMMENT	Excerpt: 30	Type: General Information
[City of San Diego, Transportation & Storm Water Department Overarching Comments (continued)]			
<ul style="list-style-type: none"> Please see attached table for further detailed comments. 			
Response: Comment noted.			
Letter: SDCity1 , Pg9, P1	NOT COMMENT	Excerpt: 31	Type: Greet/Ending
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 Gin.no (Public Utilities Department) at (858) 654-4286 or at cginno@sandiego.gov , or Ruth Kolb (Transportation & Storm Water Department) at (858) 541-4328 or at rkolb@sandiego.gov .			
Response: Comment noted.			
Letter: SDCity1 , Pg10, P1	COMMENT	Excerpt: 32	Type: Request: More Time
Comment # 1			
Section Page: NA			
Topic: General			
Comment and Recommendations:			
Recommendation: 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).			
Response: Please see Response to Comment WSPA2-2.			
Letter: SDCity1 , Pg10, P2	COMMENT	Excerpt: 33	Type: Water Quality Objectives

<p>Comment # 2 Section Page: 2.3.2, Pages 6-8 Topic: Water quality objectives Comment and Recommendation: 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.</p>			
<p>Response: Regarding the attainability of human health objectives, Please see Response to Comment ACWA1-237. The Mercury Water Quality Objectives are designed to protect human health are based on rigorous science that is described in detail in Appendices G (Fish Consumption Studies) and H (Calculation of the Human Health Objectives).</p>			
Letter: SDCity1 , Pg10, P3	COMMENT	Excerpt: 34	Type: Water Quality Objectives
<p>Comment # 3 Section Page: 2.3.2, Pages 7-8, 5.5, K.6.6, Pages 449 Topic: Least Tern Prey Fish Water Quality Objective and Approach to determine Water Quality Objective Comment and Recommendations: 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.</p>			
<p>Recommendation: 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.</p>			
<p>Response: Please see Responses to Comments MerCID1-50 and 49. In addition, the Least Tern Prey Fish Water Quality Objective is based on rigorous science that is described in detail in Appendix K (Wildlife Targets).</p>			
Letter: SDCity1 , Pg10, P3	COMMENT	Excerpt: 35	Type: Water Quality Objective
<p>Comment # 4 Section: 2.3.2, Pages 7-8, 5.5 Page 84, K.12, Page 467 Topic: Least Tern Prey Fish Water Quality Objective and Considerations for Monitoring and Assessment Comment and Recommendations: 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.</p>			
<p>Response: The Staff Report, in Appendix K, Section K.12, explicitly states that “...certain sites could be prioritized for monitoring to save resources.” (p. K-35). However, Commenter presents no reasons in addition to the statement in the Staff Report as to why monitoring should be limited to the six prioritized breeding sites.</p>			
Letter: SDCity1 , Pg10, P5	COMMENT	Excerpt: 36	Type: Implementation
<p>Comment # 5</p>			

<p>Section: 2.3.3, 2.3.4, Pages 8-12 Topic: Implementation Comment and Recommendation: The Draft Staff Report should recognize the timeframe in which the proposed water quality objectives are anticipated to be achieved.</p> <p>Recommendation: The implementation plan should be phased, with the primary efforts focused on the largest sources of mercury to the receiving waters.</p>			
<p>Response: Please see Responses to Comments WSPA2-22 and ACWA1-92.</p>			
Letter: SDCity1 , Pg11, P1	COMMENT	Excerpt: 37	Type: Water Quality Objectives
<p>Comment # 6 Section: 6.1.3, Options, Options2, Options 3, Pages 90-91 Topic: Numeric Fish Tissue Objective, and Numeric Water Column Objective Comment and Recommendation: 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 can be found in footnote 1 on page3 of the SIP. “The SIP Policy does not apply to storm water discharges.”</p> <p>Recommendation: 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>			
<p>Response: Please see Response to Comment WSPA2-78 regarding rationale for development of objectives. Please see Response to Comment WSPA2-80 for calculation of water column targets. In addition, Please see Response to Comment ACWA1-25.</p>			
Letter: SDCity1 , Pg11, P2	COMMENT	Excerpt: 38	Type: Dredging
<p>Comment #7 Section: 7.2.3 Dredging Activities, Pages 70-71 Topic: Mercury monitoring and dredging activities Comments and Recommendations: The City is concerned that requiring a dredging project to avoid creating exceedances of 12ng/L in receiving waters would be prohibitive and require control measures that are not practicable in many instances.</p> <p>Recommendation: Clarify language about the intended use of water column targets for dredging activities.</p>			
<p>Response: Neither the Provisions nor the Staff Report say that dredging activities need to meet an effluent limit. Section IV.D.6 of the Provisions affirms that The PERMITTING AUTHORITY has discretion under existing law to require dischargers to implement total mercury monitoring and</p>			

<p>procedures to control the disturbance and discharge of mercury-contaminated material during dredging and disposal of dredged material, and should consider requiring such measures in AREAS WITH ELEVATED MERCURY.” This does not require any dredging activities to meet an effluent limit of 12 ng/L or any other effluent limit. Section 7.2.3 of the Staff Report is clear that the Provisions acknowledge the Permitting Authorities existing authority to require dischargers for dredging activities to implement total mercury monitoring and control procedures. The Staff Report goes on to recommend that in areas with elevated levels of mercury the Permitting Authority should consider including such measures in permits.</p>			
Letter: SDCity1 , Pg11, P3	COMMENT	Excerpt: 39	Type: NPDES Dischargers
<p>Comment #8 Section: Section 7.2.5 Page 173-174 Topic: Current conditions for NPDES storm water discharges Comment and Recommendations: 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>Recommendation: Ad the following clarifying language to section 7.2.5 (Reasonable and Foreseeable Means of Compliance for Munciple Storm Water), “MS4s are not responsible for mercury deposited for atmospheric emissions.”</p> <p>Response: MS4 dischargers are responsible for mercury in their discharges as described in the Provisions. The Provisions do not require MS4s to monitor for mercury and MS4s are not held responsible for atmospheric emissions. Section IV.D.3.b. of the Provisions lists four pollution prevention requirements for MS4s to reduce mercury in storm water. Section 7.2.5 of the Staff Report states, “The Provisions require Phase I and Phase II MS4s permits to include mercury pollution prevention and pollution control measures to reduce total mercury or methylmercury discharges. 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 and there would be little to no change for Phase I MS4s. Phase II MS4s generally have fewer requirements, so it is estimated that some Phase II MS4s may need to add some of the activities.”</p>			
Letter: SDCity1 , Pg12, P1	COMMENT	Excerpt: 40	Type: Choose an item.
<p>Comment #9 Section: 6.11.3, Option 5, Page 140; 7.2.5, Page 171 Topic: MS4 Comment and Recommendations: The City agrees that most of the necessary actions related to mercury controls are already under way though existing requirements in municipal NPDES permits for urban storm water discharges. The City has planned Low Impact Development projects in their Water Quality Improvement lans 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>			

Recommendation: Make the language under Issue K, option 5 consistent with the language under Section 7.2.5; suggested language is provided below:

“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.”

Response: The Staff Report contains no conflict as suggested by the comment. Each of the cited sections of the Staff Report address different subject matters. Option K issue 5 is the recommendation of regulatory language in the Provisions. Section 7.2.5 outlines reasonable foreseeable methods of compliance, and recognizes that many MS4s are already undertaking such methods.

OliveMWD1**Author:** Kimberly A. Thorner **Title:** General Manager**Organization(s):** Olivenhain Municipal Water District**Address:** 1966 Olivenhain Road, Encinitas, CA 92024**Interest Group:** POTW**Date:** 1/17/2017**Contact person:** [Click here to enter text.](#)**Phone:** [Click here to enter text.](#)**E-mail:** [Click here to enter text.](#)

Letter: OliveMWD1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
I write on behalf of Olivenhain Municipal Water District (OMWD) to respectfully offer comments on the State Water Resources Control Board's (Board) Mercury Provisions included in the Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. OMWD is a water district formed under Water Code sections 71000 et seq., providing safe, reliable, and high-quality water and wastewater services to approximately 84,000 customers in Encinitas, Carlsbad, San Diego, San Marcos, Solana Beach, and neighboring communities. OMWD has two water treatment facilities (the 4S Ranch Water Reclamation Facility & David C. McCollom Water Treatment Plant), two NPDES industrial stormwater permitted sites, and groundwater development and treatment projects, all of which will potentially be impacted by the Board's proposed Provisions			
Response: Comment noted.			
Letter: OliveMWD1 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Support of a Comment Letter
OMWD concurs with the legal and policy points raised by the California Water Association (CWA), the Association of California Water Agencies (ACWA), and the California Municipal Utilities Association (CMUA) in their letter dated February 17, 2017.			
Response: Comment noted.			
Letter: OliveMWD1 , Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Summary
As a member agency of ACWA, OMWD submits this letter to supplement the comments of CWA, ACWA, and CMUA, and to provide information and examples of the practical, operational impacts that the Provisions will have on OMWD, its operations, and its 84,000 ratepayers, a material percentage of whom are also socio-economically disadvantaged.			
Response: Comment noted.			
Letter: OliveMWD1 , Pg1, P3	NOT COMMENT	Excerpt: 4	Type: Summary

Responses to Comments—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 Mercury Provisions.

Consistent with CWA and ACWA, OMWD emphasizes that our most pressing concerns relate to those Provisions that (1) regulate inland surface waters, enclosed bays and estuaries throughout California and that regulate operational discharges immediately upon adoption of the Provisions, without further regional water quality control board hearings, due process, or public comment opportunities, and (2) that are not associated with the protection of cultural or socioeconomically driven elevated rates of fish consumption .

Response: Comment noted.

Letter: OliveMWD1 , Pg1, P3	COMMENT	Excerpt: 5	Type: Too Stringent
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Specifically, our concerns center on the unattainability, disproportionate economic and operational impacts, and serious risk of enforcement liability resulting from the adoption and immediate application of the following "Non-Tribal/Non-Subsistence Related Provisions" of the mercury program:

- A new sport fish mercury objective (0.2 mg/kg) which is more stringent than the federal law objective that applies to all waterbodies currently designated either COMM, WILD, RARE, WARM, COLD, MAR, EST, or SAL to protect general fishing and human health for those consuming a typical level of fish;
- Two new, very stringent wildlife protection water quality objectives to protect prey fish (.05 mg/kg) and California least tern (CLT) prey fish (.03 mg/kg) that apply to all waterbodies designated WILD, RARE, WARM, COLD, MAR, EST, or SAL to support wildlife beneficial uses that are not directly related to the fishable/swimmable goals derived from federal Clean Water Act, 33 U.S.C. §1251; and
- Three new, exceptionally low, "C" values, which will essentially function as effluent limitations for mercury per Staff discussion (ranging from 1 ng/L to 4 ng/L to 12 ng/L) that must be applied upon adoption of in all non-storm water, individual NPDES permits, including groundwater and water supply treatment NPDES permits, wastewater treatment NPDES permits, and water purification/recycled water production NPDES permits, as well as other individual permits such as dewatering, line testing, and industrial discharge NPDES permits.

Response: Regarding the Sport Fish Water Quality Objective, Please see Response to Comment ACWA1-9. Regarding the fishable/swimmable goals and the Clean Water Act, Please see Response to Comment ACWA1-10. Regarding the timeliness of the implementation of the objectives, Please see Response to Comment ACWA1-7. Regarding individual permits such as those for dewatering and line testing operations specific to drinking water purveyors, Please see Response to Comment ACWA1-186. Regarding recycled water and water purification production NPDES permits, Please see Response to Comment ACWA1-11.

Letter: OliveMWD1 , Pg2, P1	NOT COMMENT	Excerpt: 6	Type: Summary
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We also have serious concerns about the absence of effective statewide and state funded implementation program measures to address these new regulatory mandates, and the disproportionate burden that these mandates impose on local water agencies and our customers.

Response: Comment noted.

Letter: OliveMWD1 , Pg2, P2-3 to Pg3, P1	COMMENT	Excerpt: 7	Type: Implementation
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A. The Provisions Do Not Consider Mercury Water Quality Conditions or the Principal Sources of Mercury and are Unattainable and Cost Prohibitive
 The federal Clean Water Act's implementing regulations require states to adopt water quality criteria or, under California parlance, water quality objectives (WQOs) that protect beneficial uses based on sound scientific rationale. (40 C.F.R § 131.11(a).) For toxic pollutants such as

mercury, states must "review water quality data and information on discharges to identify specific water bodies" where a toxic pollutant may be adversely affecting water quality or achievement of a beneficial use. (*Id.*) Further federal guidance directs states responsible for developing WQOs under the Clean Water Act to prioritize consideration of implementation measures and issues as part of the water quality criteria and standards development process, with a focus on addressing implementation issues early that may impede attainability of water quality standards. (*Priorities for Water Quality Standards and Criteria Programs* § 5, U.S. EPA Office of Science and Technology, April 2016.)

Further, the California Water Code requires the Board to consider, *inter alia*, the following when establishing WQOs:

- Environmental characteristics of hydrographic unit addressed by the objectives, including quality of water thereto (Wat. Code § 13241(b));
- The water quality conditions that can be reasonably achieved through coordinated control of all factors affecting water quality (Wat. Code § 13241(c));
- Implementation program actions and measures that are reasonably designed to achieve the new water quality objectives. (Wat. Code § 13242 (a));
- Economic considerations (Wat. Code § 13241(d)); and
- The need to develop and use recycled water (Wat. Code § 13421 (f)).

Unfortunately, the Provisions implement a mass designation of WQOs throughout inland surface waters, estuaries, and enclosed bays for Sport Fish, Prey Fish, and CLT Prey Fish instead of analyzing and taking into account the following factors as required by law:

- existing and naturally occurring levels of mercury in soils and water in each hydrographic unit affected by the WQO designations;
- the nature and sources of mercury in the environment and receiving waters within each hydrographic unit;
- the very limited degree to which mercury reductions and the mercury WQOs can be reasonably achieved by coordinated control of water quality factors; and
- the absence of implementation measures reasonably designed to attain the WQOs.

Response: Regarding 40 C.F.R § 131.11(a), Please see Responses to Comments ACWA1-59 and 60. Regarding 13241 factors, Please see Response to Comment WSPA2-4 and 5. For specific responses regarding the hydrographic units, Please see Response to Comment ACWA1-15. Regarding reasonable achievement of WQOs and Water Code § 13241, Please see Responses to Comments ACWA1-67 and ACWA1-168. Regarding specific water bodies and the requirements of 40 C.F.R § 131.11 (a), Please see Response to Comment ACWA1-60. Regarding Water Code § 13242, Please see Response to Comment ACWA1-162. Regarding implementation, please see Response to Comment ACWA1-87. Regarding economic considerations, Please see Response to Comment WSPA2-6.

Letter: **OliveMWD1**, Pg3, P2

COMMENT

Excerpt: 8

Type: Attainability

In fact, the implementation program does not identify any means to attain the new WQOs, in part because reasonable means to address the naturally occurring, legacy mining, and aerial deposition sources of mercury necessary to achieve such stringent WQOs do not exist. Because

<p>consideration of these legal factors is not appropriately driving the establishment of WQOs, the Provisions propose unattainable WQOs. Ultimately, these unattainable WQOs will require regional water quality control boards to devote significant resources to list most inland surface waters, enclosed bays, and estuaries under Clean Water Act Section 303(d) as impaired for mercury and, over time, to develop Total Maximum Daily Loads (TMDLs) for all such waters.</p>			
<p>Response: Please see Response to Comment ACWA1-84.</p>			
Letter: OliveMWD1 , Pg3, P3	COMMENT	Excerpt: 9	Type: Implementation
<p>Further, the Provisions establish, as the centerpiece of the implementation program for the WQOs new, very stringent, mandatory mercury numeric effluent limitations (NELs) for all individual non stormwater NPDES pennits, ranging from 1 ng/L to 12 ng/L depending on receiving water body flow conditions and beneficial uses. These new NELs are proposed to apply to individual non-stormwater NPDES Permits, 401 water quality certifications, Waste Discharge Requirements, and waivers (pp. A-8- 10). (1) In addition, in the future, other very stringent effluent limitations for other bioaccumulative pollutants must also be developed (e.g., PCBs and other pollutants), and would be applied similarly. (Staff Report Appendix T.) However, as the Staff Report acknowledges, contrary to applicable law, these new very stringent NELs governing NPDES permit discharges are not reasonably designed to achieve the proposed mercury WQOs because NPDES permit discharges are not an appreciable source of mercury. Instead the primary sources of mercury "may not be directly regulated by the water boards (e.g., atmospheric emissions, naturally occurring in soils, or geothermal sources)," and therefore the actual sources of mercury are not addressed by the proposed implementation program. (Staff Report, p. 108; see also, e.g., Staff Report, p. 153-154.)</p> <p>Footnote 1: Although there has been some confusion regarding the NPDES permits that the Provisions will apply to, the Provisions clearly require the implementation of effluent limits in, at a minimum, all individual non-stormwater NPDES Permits and WDRs. This encompasses many more permits than just those permits issued to POTWs or municipal wastewater plants and individual industrial dischargers. Appendix N defines "municipal wastewater and industrial NPDES permits" as all individual non-stormwater NPDES Permits and WDRs. In addition, the Staff Report indicates that certain General NPDES permits and WDRs already excluded from the SIP or involving low threat discharges should be excluded from the amended SIP analysis and default effluent limits set forth in the Provisions (pp. 145, N-1). However, the regulatory language of the Provisions does not contain express exceptions or clarify whether other General Permits and WDRs, like the Recycled Water WDRs, would also be excluded from the amended SIP analysis and default effluent limitations.</p>			
<p>Response: Please see Responses to Comments ACWA1-92 and 194.</p>			
Letter: OliveMWD1 , Pg4, P1	COMMENT	Excerpt: 10	Type: Economics
<p>In addition, the Provisions fail to properly and fully analyze and assess the economic impacts of setting the WQOs at unattainable low levels, and specifying compliance of with NELs by individual non stormwater NPDES permit discharges as the primary implementation program measure. Compliance with the new NELs to implement the WQOs would increase OMWD operating costs, including costs of monitoring at new and much reduced detection levels and additional operating costs associated with implementation of more robust treatment processes and compliance protocols at OMWD's tertia1y treatment facility. In addition, compliance with the new NELs would require tremendous capital investment to</p>			

update treatment technologies, compliance protocols, and outreach programs at OMWD's water supply treatment facilities			
Response: Please see Responses to Comments ACWA1-168, and 67 regarding the economic impacts. Please see Responses to Comments WSPA2-26, 56, 63, and ACWA1-70 regarding operating and upgrade costs. Please see Response to Comment ACWA1-111 regarding monitoring costs. For discussion of all costs, please see the Economic Analysis in Appendix R in the Staff Report.			
Letter: OliveMWD1 , Pg4, P2	COMMENT	Excerpt: 11	Type: Economics
With respect to increased operating costs based on the methodologies and assumptions established in Appendix R of the Staff Report, the estimated cost to improve OMWD's wastewater treatment facility processes and compliance programs, which currently employ a tertiary filtration approach, necessary to consistently meet the average annual NEL value proposed by the Provisions would be approximately \$224,000 per year. Such costs are not considered in the Staff Report. Further, the Staff Report does not include increased costs for monitoring, but OMWD is concerned that because the new NELs are so much lower than the current mercury MLs, it is possible that OMWD will not be able to determine whether it is in compliance with the NELs because such low levels of mercury may be below modern monitoring capabilities. If monitoring methods and technologies can be developed to reliably detect the lowest mercury levels permitted by the NELs, such methods will certainly be expensive to develop and implement. Therefore, further information regarding required costs to develop and implement improved monitoring technologies must be developed and assessed in the Staff Report before approving the NELs.			
Response: Please see Response to Comments ACWA1-105, 106 and 107 regarding costs of monitoring and testing. Regarding costs of monitoring for mercury, Please see Response to Comment ACWA1-111.			
Letter: OliveMWD1 , Pg4, P3	COMMENT	Excerpt: 12	Type: Economics
With respect to capital costs, to attain the NELs at its potable water treatment plant, OMWD would have to design and implement new treatment technologies to meet the NELs in discharges from its surface water treatment plant. The Staff Report has not considered the costs of implementing purification or reverse osmosis treatment technologies in its economic analysis. OMWD, however, has considered the cost of two potential technologies that could be employed in accordance with Appendix R assumptions and methodologies: Coagulation/Filtration or Granular Activated Carbon. Relying on Municipal Wastewater tables. The amortized cost of implementing either of these upgraded treatment technologies is approximately \$3 million per year. Such costs must be factored into the Staff Report assessment of the economic effects of the Provisions.			
Response: Please see Responses to Comments ACWA1-104, 105, 106 and 107 regarding costs, requirements, and options.			
Letter: OliveMWD1 , Pg4, P4	COMMENT	Excerpt: 13	Type: Economics
OMWD would also be required to increase mercury testing at its nvo industrial] stormwater NPDES stonnwater permit sites. We estimate that the combined cost increase for enhanced monitoring alone as necessary to comply with the industrial stormwater NPDES permit requirements and new lower action levels would be \$36,000 annually. In addition, if new testing indicates that the much lower industrial permit action levels are exceeded, new treatment technologies must be deployed at an additional cost that is currently not known. Further information regarding required costs to develop and implement improved monitoring technologies must be developed and assessed in the			

Staff Report before approving the lower numeric action level for the NPDES Industrial General Pennit. The Staff Report should be revised to provide information regarding potential treatment technologies that could be implemented to control mercury in industrial site runoff.			
Response: No additional monitoring requirements are being required by the provisions. If a facility has a source of mercury that discharges with storm water, you are already required to sample for it. Treatment BMPS are not the only method to obtain compliance. Since the proposed 300ng/L is a Numeric Action Level (NAL), exceeding that concentration is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Reponse Actions (ERA) if the NAL is exceeded. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process is available to Dischargers now and that is why the Staff Report suggests the “provisions would not impose any new requirements,”			
Letter: OliveMWD1 , Pg5, P1	COMMENT	Excerpt: 14	Type: Economics
Further, the requirements of the Provisions as proposed would result in greater testing complexity, compliance reporting, and potentially additional water treatment prior to discharges under individual non-stormwater permits governing dewatering operations, draining water storage tanks and flowing hydrants. Moreover, in instances where OMWD's facilities deliver water into local water bodies, such as Escondido Creek, OMWD may be obligated under the Provisions to test for mercury TMDLs.			
Additional testing, compliance reporting, and potential requirements for water treatment prior to discharge will materially increase operating costs. OMWD estimates that additional monitoring and reporting costs alone would amount to an additional combined cost of \$66,000 per year. We cannot estimate the cost of additional water treatment prior to allowing geographically dispersed discharges associated with dewatering, draining lines and tanks and flowing hydrants because we are not familiar with available treatment technologies that might be effective to meet NELs for these discharges. The Staff Report does not recommend or consider the cost of any such technologies.			
Response: Please see Response to Comment ACWA1-111 regarding monitoring costs. Regarding geographically dispersed discharges, please see Responses to Comments ACWA1-109 and 110. Regarding dewatering and line testing operations specific to drinking water purveyors, please see Response to Comment ACWA1-186.			
Letter: OliveMWD1 , Pg5, P2	COMMENT	Excerpt: 15	Type: Economics
All of these increased operating and capital costs will have significant, unavoidable impacts on sewer and water ratepayers, who will ultimately have to shoulder the financial burden of the proposed mercury minimization programs, facility upgrades, and compliance programs. All of these increased operating and capital costs must be extrapolated to all affected dischargers, and assessed in determining whether the WQOs, as implemented by the NELs, are appropriate for adoption by the Board.			
Response: The staff report and independent economic analysis adequately considers economics for both non-storm water NPDES permits as well as the requirement for municipal storm water discharges. See appendix R of the staff report.			

Letter: OliveMWD1 , Pg5, P2	COMMENT	Excerpt: 16	Type: Economics
<p>In addition, because mandating compliance of local water agencies with stringent NELs that are not likely to achieve compliance with, or even progress towards attainment of the WQOs, but will impose increased costs disproportionately on water agencies such as OMWD and their ratepayers, the Board must consider whether adoption of the NELs is an appropriate implementation measure in light of the general principles established in <i>Cal. Sportfishing Protection Alliance v. SWRCB</i> (2008) 160 Cal.App. 4th 1625, and prohibitions against the imposition of state unfunded mandates, most recently elucidated in <i>Dept. of Finance v. Commission on State Mandates</i> (2016) 1 Cal. 5th 749 (holding elements of NPDES permit for stormwater discharge constitute an unfunded state mandate).</p>			
<p>Response: Please see Response to Comment ACWA1-63.</p>			
Letter: OliveMWD1 , Pg5, P3	COMMENT	Excerpt: 17	Type: Economics
<p>B. Adverse Impacts of the Provisions on Development of Groundwater Supplies</p> <p>Although not addressed in the Staff Report, OMWD also has concerns regarding the impact of the Provisions on OMWD's future development and testing of groundwater sources of supply. OMWD is presently engaged in groundwater development projects, which are intended to respond to local sustainability and water supply needs. Due to the reduction in mercury compliance limits, if mercury is detected in those project basins, the project costs related to discharges of effluent resulting from groundwater treatment would increase dramatically. OMWD would be required to incorporate a mercury treatment technology into the project designs, as well as develop plans for permitting, compliance reporting, and outreach programs. At least one of these groundwater basin studies includes development and treatment of groundwater within an area of California least tern habitat, which, under the provisions, would mean that the lowest mercury NEL would apply to post-treatment discharges. OMWD would have to invest additional capital and would have to support increased operating costs to incorporate expensive treatment technologies to purge mercury from post-treatment brine streams. Such post-treatment systems have never been implemented or contemplated in the planning process and would increase currently projected costs for developing additional groundwater supplies substantially.</p> <p>OMWD has budgeted \$20 million toward this project. Ratepayers have already contributed substantial investments to date. Should the proposed Provisions be approved, OMWD anticipates that the groundwater projects would no longer be feasible if the provisions are approved as written.</p>			
<p>Response: Please see Response to WSPA2-5 reasonable achievability of objectives, and WSPA2-6 for economic analysis. Please also see Response to ACWA1-22 and 37 regarding burden to ratepayers. Regarding discharges from groundwater treatment systems used for municipal supply, please see ACWA1-11. In addition, the Provisions have been modified to allow Regional Water Boards the discretion to conduct a load assessment to assign appropriate effluent limits, even without a TMDL.</p>			
Letter: OliveMWD1 , Pg6, P1	COMMENT	Excerpt: 18	Type: Enforcement
<p>C. The Provisions Create Undue Exposure to Enforcement Related Liability</p>			

Responses to Comments—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 Mercury Provisions.

The Staff Report acknowledges that the mercury WQOs cannot be achieved in the short-term, taking multiple decades, if not a century to attain at minimum. As noted above, the unattainability of WQOs will, in turn, lead to listing of most waterbodies for mercury impairment, and requirements to develop TMDLs, specifically data analysis, are extremely time intensive to prepare.

Response: Comment noted. Regarding listing of waterbodies, please see Response to Comment ACWA_CWA-118.

Letter: **OliveMWD1**, Pg6, P2

COMMENT

Excerpt: 19

Type: Enforcement

1 *Enforcement Risk under Individual Non-Stormwater NPDES Permits.* As acknowledged (though to an insufficient degree) in the Staff Report, and as explained in this comment letter above, compliance with the proposed NELs will require expensive upgrades to monitoring methods, treatment processes, compliance programs, and even design, planning and construction of improved treatment facilities. All of these activities, which are absolutely necessary to comply with the NELs, will take time to design, plan, environmentally review, pennit, fund, and construct. Therefore, the Provisions must clearly establish authority for and direct Regional Water Quality Control Boards to provide sufficiently long permit compliance schedules to allow attainment of NELs.

Even with SWRCB clarification of pennit compliance schedules, the unattainability of WQOs within the decade, combined with the anticipated impainment listings and related TMDLs, call into question the availability on time schedules of sufficient duration to allow for compliance with NELs pursuant to the State Implementation Plan (SIP) and Resolution 2008-0005. It is not clear whether the Provisions intend to exempt the new mercury WQOs from the SIP, even though these WQOs will replace the California Toxics Rule mercury criteria. (See Appendix A, Section IV.D.2.)²The SIP allows only up to five (5) years from the date of issuance, reissuance, or modification of an NPDES pennit to complete actions necessary to comply with NELs, and no longer than 10 years from the effective date of the SIP (2006)-which date has past (2016).³ As a result, it is important to exempt dischargers from these SIP limitations.

In addition, Resolution 2008-0025, section 6(b) caps compliance schedules at a maximum of 10 years. As a result, time schedules are likely to be insufficient to provide compliance assurances necessary to comply with NELs and ultimately to fully implement TMDLs required to attain the new WQOs. However, the Staff Report does not identify any compliance protections or mechanisms that individual NPDES non-stonnwater dischargers can use to avoid enforcement liability and third party citizen suits. More disturbing, the Staff Reprni does not identify actions to implement in order to achieve the proposed WQOs through TMDLs or otherwise.

As a result, it is paramount that the Provisions are amended to make compliance schedules for NPDES permits, as well as other compliance assurances and perhaps alternative compliance mechanisms available for dischargers. Such assurances and mechanisms are critical to avoid the substantial liability risk of enforcement and third party citizen suit penalties, as well as attorneys' fees, which would ultimately have to be borne by ratepayers.

Footnote 2: Impairments may also call into question the degree to which those waterbodies may have assimilative capacity, notwithstanding

Water Quality Precedential Order 2001-06. That Order provides that, "A Regional Water Quality Control Board (Regional Water Board) cannot rely solely on a Section 303(d) listing as the basis for concluding that a receiving water lacks assimilative capacity for an impairing pollutant. Rather, the Regional Water Board must base assimilative capacity determinations on the relevant water quality-related data[]," as discussed with Staff in the January 9, 2017 Workshop.

Footnote 3: Even if the USEPA had not disapproved longer timeframes originally set forth in the SIP (which it did) to allow for development and implementation of TMDLs (i.e., 15 years, and an additional five years) from the effective date of the SIP to develop and adopt a TMDL, and to comply with WQBELs, the extended timeframes were not a sufficient duration to provide dischargers compliance protection from implementation of the new WQOs via the NELs, given the nature of, and the limited measures available to reduce mercury in, the environment. (See, Letter: California SIP; compliance schedule provisions from USEPA to SWRCB dated Oct. 23, 2006.)

Response: Regarding compliance schedules, see Responses to Comments ACWA1-119 through 123. Regarding assimilative capacity, please see Responses to Comments WSPA2-40 and ACWA1-139.

Letter: **OliveMWD1**, Pg7, P2

COMMENT

Excerpt: 20

Type: IGP

2. *Enforcement Risk under the Industrial General Permit.* The Provisions also impose new requirements as a part of the implementation program on industrial stormwater discharges. New much lower action levels are imposed on industrial stormwater permit discharges. However, the Staff Report fails to identify or evaluate any treatment technologies for assuring that discharges subject to the Industrial General Stormwater Permit meet the new mercury action levels. Further, CEQA environmental analysis of the potential impacts of such technologies is missing from the Staff Report as well.

Compounding these issues is the problem that the new, stringent, and unattainable WQOs will become new Industrial General Stormwater Permit "receiving water limitations." As a result, any industrial stormwater discharges that "cause or contribute to an exceedance of the mercury WQOs" would constitute a receiving water limits violation by dischargers. The vast majority, if not all inland surface waters, enclosed bays and estuaries will exceed the new WQOs for mercury, creating the risk of liability under the Industrial General Stormwater Permit's receiving water limitations, regardless of the significance (or relative insignificance) of mercury contributions associated with those discharges.

To eliminate potential discharger liability for violations of Industrial General Stormwater Permit receiving water limitations, as well as a new regulatory requirement to expand the required industrial reasonable assurance analyses and industrial stormwater pollution prevention plans (SWPPPs) to address mercury, the Provisions should be modified to clarify that mercury WQOs should be excluded from the Industrial General Stormwater Permit's receiving water limitations.

Response: An exceedance of a NAL is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Response Actions (ERA) if the NAL is exceeded. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they

Responses to Comments—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 Mercury Provisions.

already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process is available to Dischargers now and that is why the Staff Report suggests the provisions would not impose any new requirements. In addition, please see Response to Comment ACWA1-147.

Letter: **OliveMWD1**, Pg7, P5

NOT COMMENT

Excerpt: 21

Type: Summary

D. Conclusion

For the foregoing reasons, OMWD urges the Board to not approve the Provisions as written, and to continue to work with stakeholders to develop new, more reasonable WQOs, NELs, appropriate compliance assurances for discharges, and new implementation program measures that are directed toward achieving measureable mercury reductions without substantial increases in cost to water and wastewater ratepayers.

Response: Comment noted.

PSSEP2**Author:** Craig S.J. Johns **Title:** Program Manager **Organization(s):** Partnership for Sound Science in Environmental Policy**Address:** 1115 11th Street, Suite 100, Sacramento, CA 95814 **Interest Group:** INDUSTRY**Date:** 2/16/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: PSSEP2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
PSSEP appreciates the opportunity to provide supplemental comments on the proposed Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions (Statewide Mercury Proposal) dated January 4, 2017. These comments incorporate by reference those made in our January 23, 2017 letter, as well as those provided by the undersigned at the public hearing on February 7th.			
Response: Comment noted.			
Letter: PSSEP2 , Pg1, PY2	COMMENT	Excerpt: 2	Type: Support
At the February 7 public hearing, PSSEP stated unequivocally that it recognizes the importance of using State Waters for tribal-cultural practices and for subsistence fishing and we continue to support the appropriate designation of state waters by the Regional Boards.			
Response: Comment noted.			
Letter: PSSEP2 , Pg1, P2	COMMENT	Excerpt: 3	Type: Summary
Our concerns about the Statewide Mercury Proposal, and specific recommended changes provided in Attachment 1 hereto, should not be construed in any way as diverging from that support. Indeed, we think the recommended changes will enhance the Statewide Mercury Proposal; they will result in realistic efforts to achieve substantial reductions in ongoing mercury loading to California’s waterways, as well as more robust interim efforts designed to protect all Californians from health risks associated with consumption of some fish known to have unhealthy levels of methylmercury.			
Response: Comment noted.			
Letter: PSSEP2 , Pg2, P1	NOT COMMENT	Excerpt: 4	Type: Summary
At the February 7 public hearing, the State Water Board heard from many regulated community representatives about concerns regarding the potential mercury WQOs (“WQOs”) for T-CUL, T-SUB and SUB uses. In many instances, those concerns may be related to potential unknowns			

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associated with the combination of the proposed mercury WQOs and the new beneficial uses.			
Response: Comment noted.			
Letter: PSSEP2 , Pg2, P1-2	COMMENT	Excerpt: 5	Type: Split the Project
<p>PSSEP continues to share in many of those concerns, and our members continue to support the notion of either bifurcating the WQOs portion of the proposal from the new beneficial uses recognition, or to provide a brief (30-45 days) extension of time before the Statewide Mercury Proposal is returned to the State Board for adoption consideration.</p> <p>However, if the State Board is unwilling to bifurcate the Statewide Mercury Proposal as requested, or continue the adoption hearing to enable interested stakeholders to work with staff to develop acceptable language that regulated community members can support, we ask for your consideration of the specific recommended changes contained on Attachment 1.</p>			
Response: Regarding bifurcating the project, please see Responses to Comments WSPA2-3 and 19.			
Letter: PSSEP2 , Pg2, P3	COMMENT	Excerpt: 6	Type: Implementation
<p>Foremost among our recommendations is that the State Water Board direct staff to convene a stakeholder working group to develop recommendations for guidance to the Regional Boards as they consider designation of their respective waters under the new beneficial uses, and seek to implement the proposed mercury WQOs. PSSEP is anxious to participate in that process once it is convened.</p>			
Response: Please see Response to Comment CVCWA1-58.			
Letter: PSSEP2 , Pg2, P4	NOT COMMENT	Excerpt: 7	Type: Greet/Ending
Thank you for the opportunity to provide these additional comments and suggested changes to the Statewide Mercury Proposal.			
Response: Comment noted.			
Letter: PSSEP2 , Pg3, P1	COMMENT	Excerpt: 8	Type: BAFs
<p>Issue #1: Reliance on Bioaccumulation Factors to Develop Default Water Column Concentration Values/WQOs</p> <p>Proposal: Select “Option 2”, Issue L. Use mercury concentrations in fish tissue to establish WQOs. (Staff Report/SED at pp. 144-151)</p> <p>Discussion/Rationale:</p> <p>Issue L in the Staff Report/SED presents two, very distinct, approaches for Regional Boards to establish mercury WQOs for municipal wastewater and industrial dischargers. The staff recommendation is to use a mercury water column concentration approach that is derived from calculating bioaccumulation factors (i.e., multipliers that relate fish tissue concentrations to mercury in the water column, also known as “BAFs”) instead of relying on mercury concentrations in fish tissue.¹</p> <p>Our opposition to using water column concentrations for WQOs that are based on BAFs is that this approach is not well-supported by best available science, can be extraordinarily complex and variant for different waterbodies, will have potentially catastrophic impacts on point</p>			

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sources (who are typically a very small source of mercury and other priority toxic pollutants) 2 , and are not legally required under state or federal law.

Footnote 1: Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions, January 3, 2017 (hereafter, “Staff Report/SED”), §6.12.3 Options, p. 146.

Footnote 2: Indeed, municipal and industrial dischargers combined account for less than 1.4% of the ongoing mercury loading to San Francisco Bay. See, San Francisco Bay Mercury TMDL (2006), Link Here [See link in original letter]

Response: Please see Response to Comment CVCWA1-11.

Letter: **PSSEP2**, Pg4, P3

COMMENT

Excerpt: 9

Type: BAFs

1. Water column concentration objectives that are derived from BAFs are routinely associated with high levels of uncertainty.

BAFs are the ratio between the dissolved methylmercury concentration in water and the concentration of methylmercury in fish tissue. According to the Staff Report/SED, USEPA-derived national BAFs for lakes and rivers were used to derive water column target concentrations corresponding to the Sport Fish Water Quality Objective (0.2 mg/kg). The use of a default, nationwide water-to-fish tissue BAFs oversimplifies the extremely complex process of mercury bioaccumulation and ignores site-specific conditions that exist in California waterbodies. Indeed, while USEPA called for the use of BAFs in its 2001 Guidance for implementing methylmercury criterion, this approach was basically rejected when USEPA issued its new “Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion” (USEPA Mercury Guidance)³ because evaluation of the relationship between total mercury concentrations in ambient waters showed no meaningful correlation with the levels of mercury in fish tissue. According to the 2010 Mercury Guidance:

“Assessing and predicting methylmercury bioaccumulation in fish is complicated by a number of factors that influence bioaccumulation. These factors include the age or size of the organism; food web structure; water quality parameters such as pH, DOC, sulfate, alkalinity, and dissolved oxygen; mercury loadings history; proximity to wetlands; watershed land use characteristics; and waterbody productivity, morphology, and hydrology. In combination, these factors influence the rates of mercury bioaccumulation in various - and sometimes competing - ways. For example, these factors might act to increase or decrease the delivery of mercury to a waterbody, alter the net production of methylmercury in a waterbody (through changes in methylation and/or demethylation rates), or influence the bioavailability of methylmercury to aquatic organisms. Although bioaccumulation models have been developed to address these and other factors for mercury, their broad application can be limited by the site- or species-specific nature of many of the factors that influence bioaccumulation and by limitations in the data parameters necessary to run the models.”⁴

Even the Staff Report/SED for the Statewide Mercury Proposal acknowledges that the water quality criteria based on a national BAFs can be over- or under-protective in different water bodies. As such, PSSEP believes that relying on the BAF approach would lead to potentially

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catastrophic financial results for many de minimis municipal and industrial point source dischargers and result in no measurable improvement in the levels of mercury in either ambient waters, or in fish that live in and are taken from those waters.

Footnote 3: See, Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, EPA823-R-10-001, April 2010; hereafter, “USEPA Mercury Guidance”. [Link Here](#) [See link in original letter]

Footnote 4: USEPA Mercury Guidance, §3.1.3.1 at p. 26.

Response: Please see Response to Comment CVCWA1-13.

Letter: PSSEP2 , Pg4, P3	COMMENT	Excerpt: 10	Type: Effluent Limits
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2. The BAF-derived water concentration objectives will result in end-of-pipe effluent limits that will result in massive compliance costs for insignificant mercury reductions.

One consequence of using BAFs to establish water column objectives is that it facilitates the application of these water column numbers in the NPDES permitting process. Indeed, this was one of the primary justifications provided in the Staff Report/SED for recommending “Option 1” for Issue L.⁵ However, the unintended consequence of selecting this Option 1 is that it will cloak the insignificance of NPDES sources to fish tissue concentrations at the broader watershed level, and instead to focus on an end-of-pipe approach to NPDES permitting.

Whereas holistic assessment of mercury sources (as is developed under a TMDL framework) provides a clear picture of the relative importance of NPDES sources to fish tissue levels and provides context for establishing reasonable regulatory requirements, the end-of-pipe permitting approach fails to recognize or account for the relative importance of a permitted source. This leads to the situation - described in the Staff Report/SED - where significant treatment plant technology upgrades are anticipated for municipal and industrial point sources, even though those sources are recognized to be insignificant.⁶ According to a 2013 assessment of treatment technologies available to achieve ultra-low mercury water concentration limits (5 ng/L) in the State of Washington, only advanced treatment (micro-filtration/reverse osmosis) can reliably attain such low, end-of-pipe limits, and at a capital cost of approximately \$350 million for a 25 MGD treatment facility.⁷

Footnote 5: Staff Report/SED §6.12.3 at p. 146.

Footnote 6: Staff Report/SED §6.12.3 at p. 146.

Footnote 7: Treatment Technology Review and Assessment, HDR, December 4, 2013. [LinkHere](#). A copy of this report was provided to State Water Board staff in our meeting of February 8, 2017 and is incorporated here as Attachment 2. PSSEP requests that staff include the HDR Report in the “References” section of the Staff Report/SED at p. 275 as it provides a relatively comprehensive look at the technologies available to point sources to further treat out mercury from their effluent, and at what costs.

Response: Please see Response to Comment ACWA1-194.

Letter: PSSEP2 , Pg5, P2	COMMENT	Excerpt: 11	Type: Water Quality Objective
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3. The use of BAFs are not legally required, and would be a poor public policy choice if selected by the State Water Board.

It is important to note that the decision to use BAFs in the proposed mercury WQO (and particularly for implementation of NPDES-permitted municipal and industrial point sources) is not driven by federal or state legal requirements under the Clean Water Act (CWA). The decision to use BAFs, instead, is a policy choice which is intended to simplify the analysis of reasonable potential and the derivation of effluent limitations in the NPDES permitting process. However, this choice is not without many disadvantages, many of which are obliquely recognized in the Staff Report/SED. Given that it is a policy choice for the State Board, it is also appropriate to identify and understand the disadvantages associated with this decision.

With regard to the legal question, it is useful to understand the evolution of the use of BAFs in application to the regulation of mercury at both the federal and state levels. In 2000, USEPA adopted mercury water column standards for California as an element of the California Toxics Rule (CTR), using bioaccumulation factors in reaching that determination. As noted above, USEPA revisited national mercury objectives in 2010 when it adopted the Mercury Guidance for Tribes and states for implementing Clean Water Act requirements. The USEPA Mercury Guidance pointedly recommends that mercury criteria be adopted as fish tissue standards, with USEPA even acknowledging that there are many advantages to establishing statewide fish tissue criterion that are then translated (if necessary) to water column standards based on sitespecific information about mercury bioaccumulation (i.e., site-specific BAFs), rather than “adopting a water concentration criterion for an entire state or tribal jurisdiction.”⁸ Indeed, USEPA’s 2010 Mercury Guidance specifically states that, “[a] state or authorized tribe could decide to develop TMDLs and calculate WQBELs in NPDES permits directly without first measuring or calculating a BAF.”⁹

In California, two important examples exist to reject using the BAF approach for translating fish tissue standards into water column concentration objectives, both of which have been approved by this State Water Board. These examples come from the San Francisco Bay and Sacramento-San Joaquin Delta Mercury TMDLs, which were approved by the State Water Board in 2007 and 2011, respectively. It is important to note that both TMDLs rejected the approach of converting fish tissue objectives into water column targets through the use of BAFs. These two important mercury regulatory actions taken by the State Water Board within the past 10 years is solid justification and precedent for the State Water Board to follow again in the present context.

We also emphasize that USEPA Region IX approved both of these fish tissuebased mercury control plans. Not surprisingly, when it adopted the 2010 Mercury Guidance, USEPA concluded that fish tissue standards were more appropriate for mercury criteria development to more “closely tie” the “fishable designated use goal” to particular waterbodies, to more consistently relate applicable fish tissue concentration values with how fish advisories are issued, and because at environmentally relevant concentrations, some forms of mercury are easier to detect in fish tissue than in water samples.¹⁰

Footnote 8: See, USEPA Mercury Guidance, §3.1.3 at p. 24.

Footnote 9: USEPA Mercury Guidance, §3.1.2 at p. 21.

Footnote 10: See, USEPA Mercury Guidance, §3.1.2.2 at p. 22

Response: Please see Response to Comment CVCWA1-12.			
Letter: PSSEP2 , Pg6, P3	COMMENT	Excerpt: 12	Type: Language Change
Issue #2: Determining “Reasonable Potential” and “Insignificant Discharge”			
Proposal: Add/delete the following language to Chapter IV.D.2.c.1 of the Statewide Mercury Proposal, Staff Report/SED, Appendix A (Regulatory Language) at page 303:			
<p>“c. Determining Whether A Discharge Requires an Effluent Limitation for Mercury</p> <p>1) Reasonable Potential Analysis</p> <p>A PERMITTING AUTHORITY is required to apply section 1.3 of the State Water Resources Control Board’s Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (generally referred to as the SIP) (pages 5-8), to determine whether a discharge has REASONABLE POTENTIAL, in which case the permit must contain a water quality-based effluent limitation.</p> <p>To determine REASONABLE POTENTIAL, the PERMITTING AUTHORITY shall apply Steps 1-8 of section 1.3 of the SIP, as modified by the following:</p> <p><u>For mercury and other bio-accumulative pollutants that are regulated through fish tissue objectives, the REASONABLE POTENTIAL determination shall be based on Step 7 of the SIP, as modified below:</u></p> <p><u>Step 7: Replace Step 7 with the following: “Information that may be used to aid in determining if a water quality-based effluent limitation is required includes (but is not limited to): the facility type, the discharge type, mass loading analysis which evaluates the relative contribution of the discharge in comparison to other sources, assessment of the effect of reductions of the discharge loading to attainment of the water quality or fish tissue objective, demonstration of the application of best practices of pollution prevention and industrial pretreatment, presence or lack of dilution, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, existing water quality and beneficial uses of receiving water, CWA 303(d) listing for the pollutant, the presence of endangered or threatened species or critical habitat, and other relevant information. Where a TMDL has been adopted, approved by SWRCB and EPA, and is being implemented, that information should be given special consideration in the determination of the need for a water quality-based effluent limitation for the discharge in question. If data or other information needed to complete the above evaluation is unavailable or insufficient, as described in Section 1.2, to determine if a water quality-based effluent limitation is required, proceed with Step 8.”</u></p> <p>Step 1: Replace Step 1 of the SIP with the following: Identify the applicable water column concentration (C) for the lowest (most stringent) mercury water quality objective applicable to the receiving water in accordance with Chapter IV.D.2.b.</p>			

~~Step 3: Replace Step 3 of the SIP with the following: Determine the mercury concentration for the effluent using the highest observed annual average effluent mercury concentration. The annual average shall be calculated as an arithmetic mean. For any sample reported as below the detection limit, one half of the detection limit shall be used to calculate the arithmetic mean. For any sample reported as below the quantitation limit and above the detection limit, the estimated concentration shall be used to calculate the arithmetic mean. The annual average concentration is used to account for the long-term nature of the methylmercury bioaccumulation process, which may not otherwise be reflected using the maximum concentration as required by the SIP.~~

~~Step 4: Apply as set forth in the SIP, but utilize the annual average mercury concentration from Step 3 (rather than an MEC) to compare to the C from Step 1.~~

~~Step 5: Apply as set forth in the SIP, but replace the determination of the “maximum” ambient background concentration for mercury (denoted as B in the SIP), with the highest observed annual average ambient background. The annual average shall be calculated as an arithmetic mean as described in Section 1.4.3.2 of the SIP.~~

Discussion/Rationale:

In March 2000, the State Water Board adopted the SIP, which implements criteria for priority toxic pollutants contained in the California Toxics Rule, promulgated by USEPA. In February 2005, the State Water Board adopted amendments to the SIP. Each of these actions was approved by USEPA. Section 1.3 of the SIP sets forth the process and methodology by which the Regional Boards shall conduct an analysis for each priority pollutant with an applicable criterion or objective (excluding priority pollutants for which a total maximum daily load (TMDL) has been developed) to determine if a water quality-based effluent limit (WQBEL) is required in a given discharger’s NPDES permit. Section 1.3 directs the Regional Board to “use all available, valid, relevant [and] representative information” to determine whether priority pollutants in a discharger’s effluent may “cause or contribute to an excursion above any applicable priority pollutant criterion or objective.”

Step 7 of SIP Section 1.3 directs the Regional Board to review “other information available” to determine if a WQBEL is required to protect beneficial uses, notwithstanding the qualitative analysis called for in Steps 1-6 of Section 1.3. The purpose of Step 7 is to enable Regional Boards to use their best professional judgement and regulatory discretion in determining the appropriateness of imposing WQBELs for some discharges, given the totality of information which may be available to the Regional Board.

The Statewide Mercury Proposal provides two exceptions to the reasonable potential analysis, either of which is intended to enable a Regional Board to exempt a discharger from “some or all of the provisions of Chapter IV.D.2.c” if certain findings are made. The second exception is for “Insignificant Discharges” where the Regional Board makes a finding that the discharge in question will have no reasonable potential “with respect to the applicable MERCURY WATER QUALITY OBJECTIVES.”¹¹ Thus, the purpose of this language is to work in conjunction with Step 7 of SIP Section 1.3 in determining reasonable potential.

PSSEP’s proposed change to Step 7 is intended to allow the Regional Board permit writer to consider the relative mercury loading of a given discharger to a water body and, where appropriate, determine that there is no “reasonable potential” that would require the more restrictive water column concentration effluent limits. These changes would not be mandatory but, rather, would provide sufficient discretion to the permit writer to utilize all appropriate data when determining whether new and more restrictive mercury WQOs should be imposed.

Footnote 11: Staff Report/SED, Appendix. A at p. 305; emphasis added.

Response: Please see Response to Comment CVCWA1-11.

Letter: **PSSEP2**, Pg9, P3

COMMENT

Excerpt: 13

Type: Language Change

Issue #3: Calculating Effluent Limits

Proposal: Add/delete the following language to Chapter IV.D.2.c.2 of the Statewide Mercury Proposal, Staff Report/SED, Appendix A (Regulatory Language) at page 303- 304:

2) Calculation of the Effluent Limitations

If, upon the completion of applying the REASONABLE POTENTIAL analysis set forth in Chapter IV.D.2.c.1, the PERMITTING AUTHORITY does not exempt certain discharges from some or all of the provisions of Chapter IV.D.2 under this Chapter, but determines that a water quality based effluent limitation is required for mercury or other bio-accumulative pollutants that are regulated through fish tissue objectives, then the PERMITTING AUTHORITY shall calculate the effluent limitation as follows: by applying section 1.4 of the SIP.

Replace Part A of section 1.4 of the SIP with the following:

“A. If a TMDL is in effect for mercury (or other bio-accumulative pollutant), retain the water quality-based effluent limitation at the existing wasteload allocation (WLA) in the existing TMDL until an amended TMDL is adopted and approved. Upon adoption and approval of an amended new TMDL associated with new mercury water quality objectives (for mercury or other bio-accumulative pollutants objectives), adjust the water quality-based effluent limitation to be consistent with the WLAs specified in the newamended TMDL.

If a TMDL is not in effect for mercury (or other bio-accumulative pollutants), set an interim performance-based effluent limitation pending development of a pending or future TMDL for such bio-accumulative pollutants. Also, establish NPDES permit requirements to: (1) ensure implementation of best practices for pollution prevention and industrial pretreatment, (2) require participation in the development and implementation of the TMDL, and (3) require participation in a stakeholder effort to identify control measures on the major sources impacting the levels of mercury or other bio-accumulative pollutants in fish tissue in the receiving waters of the discharge.”

If part B of section 1.4 of the SIP applies, the PERMITTING AUTHORITY shall apply Steps 1-7 contained in part B of the SIP as modified by the following:

~~Step 1: Replace Step 1 of the SIP with the following: Use the same value for C as used for the REASONABLE POTENTIAL analysis in Chapter IV.D.2.c.1, Step 1, rather than the applicable fish tissue mercury water quality objective. If data are insufficient to calculate the effluent limitation, the RWQCB shall establish interim requirements in accordance with section 2.2.2 of the SIP.~~

~~Step 2: Apply as set forth in the SIP, except the ambient background concentration (referred to as B in the SIP) shall be calculated as an arithmetic mean as described in Section 1.4.3.2 of the SIP. Dilution shall be prohibited if the mercury concentration in fish tissue from fish in the receiving water exceeds the applicable MERCURY WATER QUALITY OBJECTIVES.~~

~~Steps 3-5: Skip Steps 3-5.~~

~~Step 6: Apply as set forth in the SIP but set the effluent limitation as an annual average of total mercury (rather than a monthly average) equal to the effluent concentration allowance (ECA) (from Step 2).~~

~~Step 7: Skip Step 7.~~

Discussion/Rationale:

Where a Regional Board elects not to find a discharge to be “insignificant” and thus exempted from some or all of the provisions of Chapter IV.D.2.c, the permit writer is required to calculate effluent limitations for that discharge. However, when the discharge is shown to be a de minimis source of mercury, the implementation language in the proposed Statewide Mercury Proposal should describe an approach for a reasonable and just establishment of effluent limitations.

The Statewide Mercury Proposal suggests an approach that relies on the use of BAFs and water column values which, as discussed above, are questionably derived, likely to be problematic for municipal and industrial wastewater treatment facilities, and are not legally required. Instead, PSSEP recommends an alternative approach be followed that is consistent with past NPDES permitting approaches used in San Francisco Bay and consistent with legal precedent described in *Communities for a Better Environment vs. SWRCB*.¹² This alternative approach intentionally avoids the use of BAFs and the associated problems as described above.

The recommended alternative approach to effluent limitations includes three elements:

- ◆ Interim Limitations – In water bodies where mercury TMDLs have been adopted and are being implemented, existing WLAs should serve as interim effluent limitations for point sources until amended TMDLs are developed and adopted. In water bodies where TMDLs are not yet adopted, interim effluent limitations for point sources should be performance-based mass limits, intended to cap mercury mass loads until 303(d) listings and/or TMDLs have been adopted.

- Other interim requirements – In water bodies where TMDLs are being implemented, dischargers shall be required to continue to implement the requirements of those TMDLs. In addition, dischargers should be required to participate in stakeholder processes to identify and assess the feasibility of control measures and strategies to reduce the major sources which are influencing fish tissue concentrations in the subject water body and to otherwise support development and implementation of future TMDLs. In water bodies where TMDLs have not been adopted, dischargers should be required to demonstrate implementation of best practices for mercury source control, including pollution prevention and industrial pretreatment. In addition, dischargers should be required to participate in stakeholder processes to identify and assess the feasibility of control measures and strategies to reduce the major sources which are influencing fish tissue concentrations in the subject water body and to otherwise support development and implementation of future TMDLs.
- Final WQBELs – Final WQBELs shall be the WLAs developed under future TMDLs associated with future designated beneficial uses and associated fish tissue objectives.

This alternative approach unequivocally “caps” point sources at existing TMDL wasteload allocations or performance-based levels, pending the development of watershed TMDLs for mercury, thus ensuring that the major sources of mercury to a given waterbody will be required to participate in the mercury load reductions necessary to achieve the fish tissue objectives. At the same time, this approach avoids potential (and irreversible) imposition of end-of-pipe effluent limits that could require millions of dollars of treatment technology upgrades that will have no measurable impact on the levels of mercury in the waterbody or fish within it.

Footnote 12: 132 Cal.App.4th 1313 (2005) (“CBE-II”)

Response: Please see Response to Comment CVCWA1-25.

Letter: **PSSEP2**, Pg12, P2-5

COMMENT

Excerpt: 14

Type: Language Change

Issue #4: Minor Change to “Insignificant Discharge” Provision

Proposal: Add the following language to Section IV.D, Appendix A at page 305 of the Staff Report/SED (proposed Regulatory Language):

“2) Insignificant Discharges. The PERMITTING AUTHORITY is authorized to exempt certain dischargers from some or all of the provisions of Chapter IV.D.2 if the PERMITTING AUTHORITY makes a finding that the discharge will have no REASONABLE POTENTIAL with respect to the applicable MERCURY WATER QUALITY OBJECTIVES. If exempt, the PERMITTING AUTHORITY shall have the discretion to assign routine monitoring as necessary. Routine monitoring schedules for INSIGNIFICANT DISCHARGES shall not exceed the applicable frequency specified in Chapter IV.D.2.d.2 for the discharger’s authorized rate of discharge. If determined to be exempt, nothing in this provision shall affect any obligation or requirements otherwise imposed by the PERMITTING AUTHORITY in duly adopted permits issued by the PERMITTING AUTHORITY.”

Discussion/Rationale:

This proposed change is to confirm that, where a Regional Board makes a finding of “Insignificant Discharge” due to the information considered in (proposed changed) Step 7 of SIP Section 1.3, any applicable requirements imposed by the Regional Board in prior regulatory actions (i.e., NPDES permit, Basin Plan, TMDLs, etc.) would still apply.

Response: While we appreciate the thoroughness of the Commenter’s proposed changes, they are not incorporated into the proposed Provisions for the responses given in the previous responses. Therefore, this change is not necessary.

Letter: **PSSEP2**, Pg12, P7

COMMENT

Excerpt: 15

Type: Language Change

Issue #5: State and Federal Agency Responsibility for Controlling Sources of Mercury and Other Priority Toxic Pollutants

Proposal: The Statewide Mercury Proposal should acknowledge that the best information available to the Water Boards confirms that most of the ongoing mercury loading to and that affects California’s waterways is coming from historically “uncontrolled” sources such as open water (associated with aerial deposition of mercury)¹³, historic legacy sources (gold and mercury mining), state and federal lands, or major water projects over which state and federal agencies have responsibility. PSSEP proposes that the State Water Board include specific language in the Resolution adopting the final Statewide Mercury Proposal that signals to the Regional Boards the intent to consider these sources when assigning responsibility under TMDLs and other watershed regulatory actions for mercury abatement, risk reduction, and risk communication. (See suggested provisions below in Issue #7.)

Discussion/Rationale:

Some Regional Water Boards, dischargers and interested stakeholder groups have developed substantial technical and analytical data about various priority toxic pollutants for certain water bodies in California since the initial adoption of the SIP in 2000. Much of this information has led to the development of TMDLs for priority toxic pollutants in various regions, such as the San Francisco Bay Mercury TMDL (2006); Calleguas Creek/Mugu Lagoon Mercury TMDL (2007); Guadalupe River Watershed Mercury TMDL (2008); Walker Creek Mercury TMDL (2008); Cache Creek Mercury TMDL (2004); Sacramento-San Joaquin Delta MethylMercury TMDL (2010); and Los Angeles-Long Beach Harbor Mercury TMDL (2011).

Much of the information and technical analyses about the sources and impacts of priority pollutants developed by Regional Water Boards and dischargers demonstrate that, in many impaired water bodies, municipal and industrial point sources regulated via NPDES permits issued by Regional Boards are an inconsequential, or de minimis, source of priority toxic pollutants such as mercury, PCBs or dioxins. In the case of ongoing mercury loading to certain water bodies, the de minimis nature of these point source contributions can be traced to aggressive pre-treatment, pollution prevention, and active treatment technologies imposed over the past two decades. Indeed, municipal and industrial dischargers (combined) account for less than 1.4% of the ongoing mercury loading to San Francisco Bay.¹⁴ Planned NPDES loads to the Delta (based on current permit requirements) will represent less than 0.1% of the methylmercury load in 2030.¹⁵

By comparison, open water, tributaries and existing wetlands are known to account for about 93.8% of ongoing mercury loading in the Delta,

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predominantly from legacy loads. In San Francisco Bay, over 75% of the continued loading of mercury is coming from the Central Valley watershed, natural bed erosion, and atmospheric deposition. In both instances, the Regional Boards have struggled to find effective means of controlling these “untethered” sources of most of the mercury continuing to be taken-up by fish and other biota in the waters.

In 2010, the Central Valley Regional Board took the unprecedented step of assigning responsibility for open water and tributary sources of mercury to those State of California and federal agencies responsible for managing the land and water from which these mercury loads are derived. In its 2010 Delta Methylmercury TMDL, the Central Valley Regional Board specifically found that transportation and deposition of mercury-contaminated sediment from water management activities contribute to the Delta fish mercury impairment.

Specifically, the Central Valley Regional Board determined that the State and Federal Water Projects affect the transportation of mercury and the production and transportation of methylmercury. Activities including water management and storage in and upstream of the Delta and Yolo Bypass, maintenance of and changes to salinity objectives, dredging and dredge materials disposal and reuse, and management of flood conveyance flows are subject to the open water methylmercury allocations established in the TMDL. Agencies responsible for these activities in the Delta and Yolo Bypass include, but are not limited to, the Department of Water Resources, State Lands Commission, Central Valley Flood Protection Board, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers (USACE), and State Water Resources Control Board. The Regional Board also determined that the State of California owns and manages lands and waters of the state that contribute to methylmercury loads. As a result, the State Lands Commission and Department of Water Resources were also assigned responsibility for addressing these mercury contributions to the overall fish impairment.¹⁶

Assigning state and federal agency responsibility for mercury loads coming from historic legacy sources (gold and mercury mining), state and federal lands, or major water projects over which these agencies have responsibility is reasonable, fair, and just. Without doing so, there is literally no hope of successfully abating mercury in fish from some California waters. What’s more, holding these state and federal agencies responsible is consistent with existing laws, regulations and authorities of the State and Regional Water Boards. When considering application of the water quality objectives adopted [in this proposed action] and implementing control strategies to achieve those objectives, the Regional Boards are directed to consider all available information regarding sources and contributions of mercury to a given water body and, where appropriate, assign responsibility for mercury and abatement control strategies (including any appropriate risk reduction and communication actions) to those State of California and federal agencies responsible for managing land and water from which these mercury contributions are derived.

Footnote 13: Staff Report/SED, §4.4.3 at pp. 49-50.

Footnote 14: See, San Francisco Bay Mercury TMDL (2006), [LinkHere](#). [See link in original letter]

Footnote 15: See, Summit Partners Comment Letter on Statewide Mercury Proposal, February 17, 2017.

Footnote 16: See, Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin River Delta Estuary (Attachment 1 to Resolution No. R5-2010-0043) at p. 6.

(LinkHere) [See link in original letter]			
Response: Please see Responses to Comments CVCWA1-29 and 30.			
Letter: PSSEP2 , Pg15, P1	COMMENT	Excerpt: 16	Type: Language Change
Issue #6: State Board Guidance to Regional Boards for Implementing Statewide Mercury Proposal			
<p>Proposal: The State Board should include language in the Adopting Resolution for the Statewide Mercury Proposal that directs State Water Board staff to convene a stakeholder working group to provide suggestions for follow-up guidance to the Regional Boards for implementing the Statewide Mercury Proposal, including approaches for and when to designate waterbodies under the new T-CUL, T-SUB and SUB beneficial uses, and implementing the mercury WQOs. Some of the items that should be included in that direction for staff follow-up include:</p> <ul style="list-style-type: none"> • Prior to designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards should identify and evaluate all known or suspected sources of priority toxic pollutants. This analysis should consider traditional point sources, non-point sources, aerial deposition, open water, historical or “legacy” sources, and any other reasonably discernable sources of the priority toxic pollutants. • To the maximum extent possible, all relevant information developed for TMDLs, site specific objectives, use analyses, or other regulatory actions shall be utilized by Regional Boards in designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters. • When determining whether and to what extent to designate waters for TCUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards shall consider all available information relevant to ascertaining the geographic extent to which such waters are used for these beneficial uses. • When determining site specific water quality objectives to protect T-CUL, T-SUB and SUB beneficial uses based on consumption of fish or aquatic-dependent wildlife, the Regional Boards should develop, through a publicly-noticed process, appropriate protocols for determining consumption patterns (i.e., types of fish consumed, volumes of each fish consumed, frequency of consumption, etc.) relative to those waters (or sub-portions of waters) for which T-CUL, T-SUB and SUB beneficial uses have been designated. • Regional Boards should convene working groups of key stakeholders (e.g., Tribes, subsistence fishing community, environmental justice organizations, regulated community, State of California, federal agencies that own or have responsibility for land or water projects that are a known or suspected source of priority toxic pollutants) to address adoption and implementation of water quality objectives for adopted uses. Considerations should include a full range of possible management and control measures, and their relative efficacy in achieving fish tissue targets. • The State Water Board should direct staff to work with interested stakeholders (i.e., representatives from the Tribes, subsistence fishing and environmental justice organizations, dischargers, and public health agency representatives) in developing recommendations for an appropriate risk reduction and communication strategy that could be implemented statewide.¹⁷ 			
Footnote 17: See, Issue N, Public Exposure Risk Reduction & Communication, Staff Report/SED at p. 166. As an aside, PSSEP notes that the Staff			

Report/SED describes the risk reduction and communication program associated with the San Francisco Bay Mercury TMDL in the past tense, suggesting that the program has expired or been terminated. In fact, the program is very much alive, as described by Mr. Alexander Nguyen from APA Family Support Services/API Family Resource Network at the State Water Board’s public hearing on February 7. (HearingPresentation at 7:38:45). These efforts continue to be financially supported by the Bay Area POTWs and Refineries. PSSEP believes that enhanced risk reduction and communication strategies can serve as important component of protecting beneficial uses while acknowledging the practical and technical limitations of achieving fish tissue targets for mercury within the next 6-8 generations.

Response: Please see Response to Comment CVCWA1-58.

Letter: **PSSEP2**, Pg16, P1-4

COMMENT

Excerpt: 17

Type: Language Change

Issue #7: Adoption Resolution Provisions

Proposal: PSSEP suggests the following provisions be added to the Adoption Resolution to address the issues raised in this Attachment 1.

[These provisions for the Adoption Resolution apply to our request for modification of the Reasonable Potential Analysis changes.]

x-1. In March 2000, the State Water Board adopted the SIP, which implements criteria for priority toxic pollutants contained in the California Toxics Rule, promulgated by the U.S. Environmental Protection Agency (USEPA). In February 2005, the State Water Board adopted amendments to the SIP. Each of these actions was approved by USEPA

x-2. Section 1.3 of the SIP sets forth the process and methodology by which the Regional Boards shall conduct an analysis for each priority pollutant with an applicable criterion or objective (excluding priority pollutants for which a total maximum daily load (TMDL) has been developed) to determine if a water quality-based effluent limit (WQBEL) is required in a given discharger’s NPDES permit. Section 1.3 directs the Regional Board to “use all available, valid, relevant [and] representative information” to determine whether priority pollutants in a discharger’s effluent may “cause or contribute to an excursion above any applicable priority pollutant criterion or objective.”

x-3. Step 7 of Section 1.3 directs the Regional Board to review “other information available” to determine if a WQBEL is required to protect beneficial uses, notwithstanding the qualitative analysis called for in Steps 1-6 of Section 1.3. The purpose of Step 7 is to enable Regional Boards to use their best professional judgement and regulatory discretion in determining the appropriateness of imposing WQBELs given the totality of information which may be available to the Regional Board.

x-4. It is the intent of the State Water Board that Regional Boards implement the SIP procedures in a way that is protective of water quality and beneficial uses, as well as cognizant of the overall source loadings and contributions of priority toxic pollutants to a given water body. In order to effect this intent, the State Water Board adopts the following changes to Step 7 of Section 1.3 of the SIP; these changes are intended to allow the Regional Board permit writer to consider the relative mercury loading of a given discharger to a water body and, where appropriate, determine that there is no “reasonable potential” that would require the more restrictive water column concentration effluent limits. These

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changes would not be mandatory but, rather, would provide sufficient discretion to the permit writer to utilize all appropriate data when determining whether new and more restrictive mercury WQOs should be imposed

Response: We appreciate your input.

Letter: **PSSEP2**, Pg17, P1

COMMENT

Excerpt: 18

Type: Language Change

[Issue #7: Adoption Resolution Provisions

Proposal: PSSEP suggests the following provisions be added to the Adoption Resolution to address the issues raised in this Attachment 1. (Continued)]

[These provisions for the Adoption Resolution apply to general recognition of the information developed from doing various Mercury TMDLs regarding relative contributions, and also on the direction to Regional Boards that state and federal agencies with responsibility for or control over sources of mercury loading, be included in source analysis, load reduction requirements, and all other obligations imposed on any other mercury sources via TMDLs, etc.]

x-5. The State Water Board recognizes that the Regional Water Boards and dischargers have developed substantial technical and analytical data about various priority toxic pollutants for certain water bodies in California since the initial adoption of the SIP in 2000. Much of this information has led to the development of TMDLs for priority toxic pollutants in various regions, such as the San Francisco Bay Mercury TMDL (2006); Calleguas Creek/Mugu Lagoon Mercury TMDL (2007); Guadalupe River Watershed Mercury TMDL (2008); Walker Creek Mercury TMDL (2008); Cache Creek Mercury TMDL (2004); Sacramento-San Joaquin Delta MethylMercury TMDL (2010); and Los Angeles-Long Beach Harbor Mercury TMDL (2011).

x-6. Much of the information and technical analyses developed about the sources and impacts of priority pollutants developed by Regional Water Boards and dischargers demonstrate that, in many impaired water bodies, municipal and industrial point sources regulated via NPDES permits issued by Regional Boards are an inconsequential, or de minimis, source of certain priority toxic pollutants. In the case of ongoing mercury loading to certain water bodies, the de minimis nature of these point source contributions can be traced to aggressive pre-treatment, pollution prevention, and active treatment technologies imposed over the past two decades. Indeed, municipal and industrial dischargers combined account for less than 1.4% of the ongoing mercury loading to San Francisco Bay. Planned NPDES loads to the Delta (based on current permit requirements) will represent less than 0.1% of the methylmercury load in 2030.

x-7. By comparison, open water, tributaries and existing wetlands are known to account for about 93.8% of ongoing mercury loading in the Delta, predominantly from legacy loads. In San Francisco Bay, over 75% of the continued loading of mercury is coming from the Central Valley watershed, natural bed erosion, and atmospheric deposition. In both instances, the Regional Boards have struggled to find effective means of controlling these “untethered” sources of most of the mercury continuing to be taken-up by fish and other biota in the waters.

In 2010, the Central Valley Regional Board took the unprecedented step of assigning responsibility for open water and tributary sources of

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mercury to those State of California and federal agencies responsible for managing the land and water from which these mercury loads are derived. In its 2010 Delta Methylmercury TMDL, the Central Valley Regional Board specifically found that transportation and deposition of mercurycontaminated sediment from water management activities contribute to the Delta fish mercury impairment.

Specifically, the Central Valley Regional Board determined that the State and Federal Water Projects affect the transportation of mercury and the production and transportation of methylmercury. Activities including water management and storage in and upstream of the Delta and Yolo Bypass, maintenance of and changes to salinity objectives, dredging and dredge materials disposal and reuse, and management of flood conveyance flows are subject to the open water methylmercury allocations established in the TMDL. Agencies responsible for these activities in the Delta and Yolo Bypass include, but are not limited to, the Department of Water Resources, State Lands Commission, Central Valley Flood Protection Board, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers (USACE), and State Water Resources Control Board. The Regional Board also determined that the State of California owns and manages lands and waters of the state that contribute to methylmercury loads. As a result, the State Lands Commission and Department of Water Resources were also assigned responsibility for addressing these mercury contributions to the overall fish impairment.

Assigning state and federal agency responsibility for mercury loads coming from historic legacy sources (gold and mercury mining), state and federal lands, or major water projects over which these agencies have responsibility is reasonable, fair, and just. Without doing so, there is literally no hope of successfully abating mercury in fish from some California waters. What’s more, holding these state and federal agencies responsible is consistent with existing laws, regulations and authorities of the State and Regional Water Boards. When considering application of the water quality objectives adopted [in this action] and implementing control strategies to achieve those objectives, the Regional Boards are directed to consider all available information regarding sources and contributions of mercury to a given water body and, where appropriate, assign responsibility for mercury and abatement control strategies (including any appropriate risk reduction and communication actions) to those State of California and federal agencies responsible for managing land and water from which these mercury contributions are derived.

Response: Please see Response to Comment CVCWA1-57.

Letter: PSSEP2, Pg18, P4	COMMENT	Excerpt: 19	Type: Language Change
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[Issue #7: Adoption Resolution Provisions
 Proposal: PSSEP suggests the following provisions be added to the Adoption Resolution to address the issues raised in this Attachment 1. (Continued)]

[These provisions for the Adoption Resolution apply to our request for future guidance from the State Board to Regional Boards when adopting the beneficial uses and applying the water quality objectives.]

x-8. The State Board directs its staff, working with the Regional Water Boards and interested stakeholders, to develop guidance for the Regional Water Boards when formally designating waters in their respective regions for T-CUL, T-SUB and SUB beneficial uses that address, without limitation, the following topics:

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- Prior to designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards shall identify and evaluate all known or suspected sources of priority toxic pollutants. This analysis should consider traditional point sources, non-point sources, aerial deposition, open water, historical or “legacy” sources, and any other reasonably discernable sources of the priority toxic pollutants.
- To the maximum extent possible, all relevant information developed for TMDLs, site specific objectives, use analyses, or other regulatory actions shall be utilized by Regional Boards in designating waters for T-CUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters.
- When determining whether and to what extent to designate waters for TCUL, T-SUB and SUB beneficial uses, or implementing water quality objectives for such designated waters, Regional Boards shall consider all available information relevant to ascertaining the geographic extent to which such waters are used for these beneficial uses.
- When determining site specific water quality objectives to protect T-CUL, T-SUB and SUB beneficial uses based on consumption of fish or aquatic-dependent wildlife, the Regional Boards should develop, through a publicly-noticed process, appropriate protocols for determining consumption patterns (i.e., types of fish consumed, volumes of each fish consumed, frequency of consumption, etc.) relative to those waters (or sub-portions of waters) for which T-CUL, T-SUB and SUB beneficial uses have been designated.
- Regional Boards should convene working groups of key stakeholders (e.g., Tribes, subsistence fishing community, regulated community, State of California, federal agencies that own or have responsibility for land or water projects that are a known or suspected source of priority toxic pollutants) to address adoption and implementation of water quality objectives for adopted uses. Considerations should include a full range of possible management and control measures, and their relative efficacy in achieving fish tissue targets.

Response: Please see Response to Comment CVCWA1-58.

PomoUL1**Author:** Linda D. Rosas **Title:** Environmental Director **Organization(s):** Habematolel Pomo of Upper Lake**Address:** 375 E. Hwy 20, Suite I, P.O. Box 516, Upper Lake, CA95485 **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: PomoUL1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the California Indian Environmental Alliance [any others who sign on] [We]thank you for this opportunity to comment on the SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives. For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.			
Response: Comment noted.			
Letter: PomoUL1 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary/Support
We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.			
It is encouraging that the SWRCB recognizes these uses explicitly now as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.			
The legacy of Mercury in California land and waters a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their inherent responsibility to protect the environment that that sustains their Peoples and all living things. When addressing the toxicity that persists from this era it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board			

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for including Tribal beneficial uses in the Provisions.			
Response: Comments noted. Thank you for your statement of support.			
Letter: PomoUL1 , Pg2, P2	NOT COMMENT	Excerpt: 3	Type: Summary
To assist in the success of this Plan and efforts that will stem from it we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions, including the Staff Report the SED and the Provisions within, referred to as the Plan throughout this document:			
Response: Comment noted.			
Letter: PomoUL1 , Pg2, P3	COMMENT	Excerpt: 4	Type: Support
Continued inclusion of CUL, T-SUB and SUB As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code S 13241, subs. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.			
Response: Comment noted.			
Letter: PomoUL1 , Pg2, P4	COMMENT	Excerpt: 5	Type: BU/Designation
Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice culture and to eat traditional foods it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion, any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete			
Response: Comment noted.			
Letter: PomoUL1 , Pg2, P5	COMMENT	Excerpt: 6	Type: BU/Designation
The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial use definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.			
Response: Comment noted.			
Letter: PomoUL1 , Pg2, P6	COMMENT	Excerpt: 7	Type: BU/Designation

Over a four-year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely "tribal traditional and cultural uses" and "tribal subsistence fishing" in order that they could be applied statewide. Definition development began with the language first adopted by Region I- and for four years we worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Provisions which unfortunately changed these definitions as follows:

In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm that cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase "as affirmed by California Native American Tribe(s)," was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.

In the Provisions staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of "minimal," which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word "fundamental" purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.

Response: Please see Response to Comment CIEA EtA11-3.

Letter: PomoUL1 , Pg3, P3	COMMENT	Excerpt: 8	Type: BU/Designation
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Recommendations:

Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses

Response: Please see Response to Comment CIEA EtA11-3.

Letter: PomoUL1 , Pg3, P3	COMMENT	Excerpt: 9	Type: Support
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[Recommendations (Continued)]

That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily.

Response: Please see Response to Comment CIEA EtA11-3.

Letter: PomoUL1 , Pg3, P3	COMMENT	Excerpt: 10	Type: Language Change
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[Recommendations (Continued)]

We recommend the following revisions to these definitions in order to return them to their original meaning and intent:

Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, e+fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s),]

Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet rminimal [fundamental] needs for sustenance.

Response: Please see Response to Comment CIEAEtAI1-3.

Letter: PomoUL1 , Pg3, P4	COMMENT	Excerpt: 11	Type: Language Change
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Bioavailability of Mercury

We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bio accumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8

Recommendation:

That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations

Response: Please see Response to Comment CIEAEtAI1-4.

Letter: PomoUL1 , Pg4, P2	COMMENT	Excerpt: 12	Type: Objectives/Other Contaminants
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Current and Future Use of the Beneficial Use Provisions:

Page xvii of the Executive Summary states that "the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established." This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word "is."

Response: Please see Response to Comment CIEAEtAI1-5.

Letter: PomoUL1 , Pg4, P3	COMMENT	Excerpt: 13	Type: ???
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Page xviii states that associated mercury WQOs related to subsistence beneficial uses (TSUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.

Response: Please see Response to Comment CIEAEtAI1-5.

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Letter: PomoUL1 , Pg4, P4	COMMENT	Excerpt: 14	Type: ???
<p>Recommendations: That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments.</p>			
<p>Response: Please see Response to Comment CIEAETAI1-5.</p>			
Letter: PomoUL1 , Pg4, P5	COMMENT	Excerpt: 15	Type: ???
<p>[Recommendations: (continued)] That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates.</p>			
<p>Response: Please see Response to Comment CIEAETAI1-5.</p>			
Letter: PomoUL1 , Pg4, P6	COMMENT	Excerpt: 16	Type: ???
<p>We recommend that this forward-thinking sentiment also be extended explicitly in the Plan to the continued application of Tribal Cultural beneficial use.</p>			
<p>Response: Please see Response to Comment CIEAETAI1-5.</p>			
Letter: PomoUL1 , Pg4, P7	COMMENT	Excerpt: 17	Type: ???
<p>Strengthening of the T-SUB Water Quality Objectives This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 B oz, meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is "the same as the U.S. EPA nationally recommended subsistence rate."</p> <p>The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.</p> <p>Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the</p>			

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historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg5, P3	COMMENT	Excerpt: 18	Type: ???
We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code 5 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of L75 grams per day may be a more realistic balanced consideration of all California's beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 775 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 854L7 , November 28,2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 O.O4,20tL). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg5, P4-5	Choose an item.	Excerpt: 19	Type: Choose an item.
the 142grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported "CA Tribal Fish Consumption Study" (SWRCB- UC Davis, 2016), which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a70% TL3/30% TL4 mixture, and that allTribes do not consume the same fish species.			
Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available. When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg6, P1	COMMENT	Excerpt: 20	Type: Choose an item.
We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides and overview of CA Tribal fish consumption patterns it is not exhaustive and it can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs			

to support higher consumption rates.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg6, P2	COMMENT	Excerpt: 21	Type: Choose an item.
We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg6, P3	COMMENT	Excerpt: 22	Type: Choose an item.
<p>Recommendations; 6.5 Issues E: Yes, Option 2/amended as follows .</p> <ul style="list-style-type: none"> • That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) basqd on a fish consumption rate of 175 grams per day,"allowing safe consumption of fish at 5-6 meals per week. o That the Plan affirm that this WQO is a minimum statewide standard, • That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that RegionalWater Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level • That the Plan include measures to increase the availability of traditional TL3 fish . through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat, and o That the Plan include language regarding the applicable state and federal antidegradation or anti-backsliding provisions • It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals Per week. 			
Response: Please see Response to Comment CIEAETAI1-6.			
Letter: PomoUL1 , Pg6, P4	COMMENT	Excerpt: 23	Type: BU/Designation
<p>CUL Water Quality Objective Considerations</p> <p>We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However, we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.</p>			
Response: Please see Response to Comment CIEAETAI1-7.			
Letter: PomoUL1 , Pg7,	COMMENT	Excerpt: 24	Type: BU/Designation

P1			
<p>Additionally, not all information regarding exposure to cultural uses has been established. For example, we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.</p> <p>Response: Please see Response to Comment CIEAetA11-7.</p>			
Letter: PomoUL1 , Pg7, P2	COMMENT	Excerpt: 25	Type: BU/Designation
<p>Recommendation: 6.6 Issue F. – Yes, Option 3/amended as follows</p> <ul style="list-style-type: none"> We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses. That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses. <p>Response: Please see Response to Comment CIEAetA11-7.</p>			
Letter: PomoUL1 , Pg7, P3	COMMENT	Excerpt: 26	Type: Revisit RSC
<p>Revisit the RFC [sic]</p> <p>The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).</p> <p>The calculation for the Mercury WQOs to protect human health describes the RSC as follows:</p> <p>RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day.</p> <p>Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?</p> <p>Recommendation:</p> <ul style="list-style-type: none"> That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation. <p>Response: Please see Response to Comment CIEAetA11-8.</p>			
Letter: PomoUL1 , Pg7,	COMMENT	Excerpt: 27	Type:

P5			BU/Designation/Guidance
<p>Evidence in Designating Beneficial Uses</p> <p>On Pg. 111 the Plan text states that <i>“The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses.”</i> The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils. 8</p> <p>We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: <i>“However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition.”</i> There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level. • That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use. 			
<p>Response: Please see Response to Comment CIEAetA11-9.</p>			
Letter: PomoUL1 , Pg8, P3	COMMENT	Excerpt: 28	Type: Modify Definition
<p>Expand Examples of Trophic Level 4 Fish</p> <p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • Include sturgeon in the definition section of the Plan text as follows: <p>TROPHIC LEVEL 4 FISH (TL4): Fish that consume TROPHIC LEVEL 3 fish and other aquatic organisms. [Examples of these s]pecies include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C.</p>			

Response: Please see Response to Comment CIEAEtA11-10.			
Letter: PomoUL1 , Pg9, P1	COMMENT	Excerpt: 29	Type: Add Text re: SB 52
<p><u>Include information regarding Tribal Consultation</u></p> <p>We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example, related to section 2.6.3 the Plan text states that:</p> <p>"Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, sub. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, sub. (b))"</p> <p>This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order B10-11.</p> <p><u>Recommendation:</u></p> <p>That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:</p> <p>Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.</p> <p>Executive Order B-10-11: Requires that, "Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes." Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self-government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and</p>			

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non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern 10 and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code § 21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52.

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those polies. One example is the policy developed by the Karuk Tribe.

Response: Please see Response to Comment CIEAetA11-11.

Letter: PomoUL1 , Pg10, P4	COMMENT	Excerpt: 30	Type: Minor Revision
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in “Loleta (Eureka).” This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor.

Response: Please see Response to Comment CIEAetA11-12.

Letter: PomoUL1 , Pg10, P4	COMMENT	Excerpt: 31	Type: BU/Designation
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In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain “to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.” (Resolve Clause No. 1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, REC1, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:

these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order “to create a consistent set of beneficial uses to be used” (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan...

Response: Please see Response to Comment CIEAetA11-13.

Letter: PomoUL1 , Pg11, P2	COMMENT	Excerpt: 32	Type: BU/Designation
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Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs

facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus at risk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

Response: Please see Response to Comment CIEAetA11-15.

Letter: **PomoUL1**, Pg12, P1

NOT COMMENT

Excerpt: 33

Type: Greet/Ending

Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Thank you.

PadreMWD1

Author: Allen Carlisle **Title:** General Manager

Organization(s): PADREDAM Municipal Water District

Address: 9300 Fanita Parkway, Santee, CA 92071

Interest Group: STORM

Date: 2/17/2017

Contact person: [Click here to enter text.](#)

Phone: [Click here to enter text.](#)

E-mail: [Click here to enter text.](#)

Letter: PadreMWD1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of Padre Dam Municipal Water District, thank you for this opportunity to provide comments on the proposed mercury regulations for Part 2 of the Water Quality Control Plan for inland surface waters, enclosed bays, and estuaries of California.			
Response: Comment noted.			
Letter: PadreMWD1 , Pg1, P1	NOT COMMENT	Excerpt: 2	Type: Summary
Padre Dam provides water, waste water, recycled water and recreational services to a population of 100,000 people in East San Diego County.			
Response: Comment noted.			
Letter: PadreMWD1 , Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Summary
There are many legal and policy points on this issue that have been raised by the California Water Association and the Association of California Water Agencies in their letters to the Water Board dated February, 17, 2017.			
Response: Comment noted.			
Letter: PadreMWD1 , Pg1, P2	COMMENT	Excerpt: 4	Type: Economics
We have concerns that many of the provisions proposed contain program measures that are unfunded and could place a significant hardship and burden on local water agencies and customers.			
Response: Please see Responses to Comments ACWA1-172 and 173.			
Letter: PadreMWD1 , Pg1, P3	COMMENT	Excerpt: 5	Type: Guidance
Padre Dam proposes that the State Water Board not approve the Provisions as written, and instead continue to work with stakeholders to develop new, more reasonable program measures that are directed toward achieving measureable mercury reductions without substantial increases in cost to water and wastewater ratepayers.			
Response: Please see Responses to Comments to CVCWA1-58 and ACWA1-75.			

Responses to Comments—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 Mercury Provisions.

Letter: PadreMWD1 , Pg1, P4	COMMENT	Excerpt: 6	Type: Request: More Time
Thank you for the opportunity to provide comments on proposed Mercury Provisions and we hope you will consider extending the timing of the process for approving these provisions.			
Response: Regarding more time, please see Responses to Comments WSPA2-2 and ACWA1-19.			

CFBF1		
Author: Chris Scheuring	Title: Managing Council	Organization(s): California Farm Bureau Federation, Office of the General Council
Address: 2300 River Plaza Drive, Sacramento, CA 95833	Interest Group:	AG
Date: 2/17/2017		
Contact person: Click here to enter text.	Phone: Click here to enter text.	E-mail: Click here to enter text.

Letter: CFBF1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The California Farm Bureau Federation (“Farm Bureau”) submits these comments on the January 3, 2017 draft Staff Report for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries in California – Tribal and Subsistence Beneficial Uses and Mercury Provisions (“Plan”), as to the proposed new beneficial uses that would be added to the Plan.			
Response: Comment noted.			
Letter: CFBF1 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary
Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 County Farm Bureaus currently representing nearly 48,118 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.			
Response: Comment noted.			
Letter: CFBF1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Beneficial Uses
Farm Bureau is in particular concerned about the relationship between the proposed new beneficial uses in the Plan and potential instream flow requirements. In that regard, Farm Bureau endorses the comments of the Northern California Water Association on that subject, delivered by letter as of this date. We hope you will consider and incorporate those comments and suggested revisions in the Plan.			
Response: Please see Response to Comment MerclD1-58.			
Letter: CFBF1 , Pg2, P4	NOT COMMENT	Excerpt: 4	Type: Greet/Ending
Thank you for your consideration of the foregoing.			

Responses to Comments—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 Mercury Provisions.

Response: You are welcome.

CH2OAEt1**Author:** Andria Ventura, et al **Title:** Toxics Program Manager **Organization(s):** Clean Water Action**Address:** [Click here to enter text.](#)**Interest Group:** NGO**Date:** 2/16/2017**Contact person:** [Click here to enter text.](#)**Phone:** [Click here to enter text.](#)**E-mail:** [Click here to enter text.](#)

Letter: CH2OAEt1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of Clean Water Action, San Francisco Baykeeper, Heal the Bay, Los Angeles Waterkeeper, and our tens of thousands of California members, we thank the State Water Resources Control Board (Water Board) for this opportunity to provide comment on the provisions and draft Staff Report for Beneficial Uses and Mercury Objectives.			
Response: Comment noted.			
Letter: CH2OAEt1 , Pg1, P1	NOT COMMENT	Excerpt: 2	Type: Choose an item.
These brief comments focus specifically on the proposed process the Water Board will use to recognize new beneficial uses for individual waterbodies.			
Response: Comment noted.			
Letter: CH2OAEt1 , Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Summary
Our organizations have been stakeholders in the development of TMDLs and other water quality regulations for decades. We have long advocated for recognition of subsistence fishing and traditional uses because water cleanup goals were repeatedly found to be inadequate to protect those most vulnerable to mercury, PCBs, pesticides, dioxin, and other bioaccumulative pollutants in California waters. Since 2013, we have worked with the Water Board and allies to define the beneficial uses needed to protect all Californians, to advance a process by which they could be recognized, and to ensure that they would not only be adopted into the mercury objectives, but actually integrated into the objectives and ultimately achieved.			
Response: Comment noted.			
Letter: CH2OAEt1 , Pg1, P3	NOT COMMENT	Excerpt: 4	Type: Summary

Responses to Comments—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 Mercury Provisions.

<p>While our organizations were primarily involved with developing the definitions for non-tribal subsistence fishing, we conferred with tribal allies and continue to support their definitions as a means of protecting their unique communities. Our primary goal now is to ensure that the three beneficial uses are approved with all expediency by the Water Board, so that we can begin the work to identify appropriate waterways to which they are applicable and how to ensure we address the contamination issues that affect impacted communities. With this in mind, we offer the following thoughts:</p>			
<p>Response: Comment noted.</p>			
Letter: CH2OAEt1, Pg1, P4	COMMENT	Excerpt: 5	Type: Support
<p>Definitions: Our organizations fully support the definitions of the three proposed beneficial uses for non-tribal subsistence fishing, tribal subsistence fishing, and tribal traditional and cultural use. These have been vetted through a robust stakeholder process which, while done separately, provided ample opportunity for impacted communities, public advocates, dischargers, regulators, and other interested parties to weigh in or clarify what the definitions would mean as they are regionally applied to waterways.</p>			
<p>Response: Thank you for your support.</p>			
Letter: CH2OAEt1, Pg1, P5 to Pg2, P1-2	COMMENT	Excerpt: 6	Type: Beneficial Uses
<p>Our four organizations do not support adding specific qualifications within the definitions themselves to address concerns about flow conditions or water rights, a strategy suggested at the Water Board’s January 7th hearing. First, the staff report adequately documents the intent of the subsistence fishing and tribal subsistence fishing beneficial uses to protect human health and differentiates them from other beneficial uses. As the Staff Report clearly states:</p> <p style="padding-left: 40px;"><i>“The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses relate to the risk to human health from the consumption of noncommercial fish or shellfish... the function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to Aquaculture, Warm Freshwater Habitat, Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.”</i></p> <p>Our primary reason for opposing this suggestion, however, is that no other beneficial use under Porter Cologne includes such added language. It would be inappropriate to subject those uses meant to protect low income communities and communities of color to unnecessary qualification when sports and commercial fishing beneficial uses are simply stated. If further clarification is needed, it belongs in the staff report.</p>			
<p>Response: Comment noted. The beneficial use definitions in the Provisions will not include changes addressing concerns about flow conditions or water rights.</p>			
Letter: CH2OAEt1, Pg2, P3-5	COMMENT	Excerpt: 7	Type: Subsistence Fishing
<p>Mercury Objectives for Subsistence Fishing: While numeric objectives provide a clearer pathway toward establishing remediation parameters,</p>			

Responses to Comments—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 Mercury Provisions.

we understand that in determining how non-tribal subsistence fishing could be protected from mercury (or other contaminants in future) is complicated by the great variances in fishing practices water conditions. For that reason, we support the narrative objective as stated in Appendix A(c):

“Waters with the Subsistence Fishing (SUB) beneficial use shall be maintained free of mercury at concentrations which accumulate in fish and cause adverse biological, reproductive, or neurological effects. The fish consumption rate used to evaluate this objective shall be derived from water body- and population-specific data and information on the subsistence fishers’ rate and form (e.g. whole, fillet with skin, skinless fillet) of fish consumption.”

This provides the flexibility necessary to establish appropriate objectives and remediation goals accounting “for the wide variation of consumption rates and fish species encompassed by the SUB beneficial use.” This will provide a reasonable pathway for regulators to address impacted communities’ needs across the state.

Response: [RECHECK FOR FINAL] Comment noted. The language remains unchanged with the exception of the addition of the phrase “in people” after the first sentence. Please note that this is not the entire beneficial use definition, which continues:

“When a water quality control plan designates a water body or water body segment with the Subsistence Fishing (SUB) beneficial use, development of a region-wide or site-specific numeric fish tissue mercury water quality objective is recommended to account for the wide variation of consumption rate and fish species encompassed by the SUB beneficial use.”

Letter: CH20Aet1, Pg2, P6	COMMENT	Excerpt: 8	Type: Split the Project
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Bifurcation: Our organizations oppose bifurcating the adoption of the new beneficial uses and the mercury objectives or any other strategy that will delay recognition of subsistence fishing and tribal uses. We were originally led to expect these beneficial uses to come before the Water Board in late 2013. While we regret the delay, we have come to appreciate the process that was implemented to ensure that we properly defined these uses and allowed for a free flow of input and concerns.

Response: Comment noted. The State Water Board will not bifurcate this rulemaking.

Letter: CH20Aet1, Pg2, P7	COMMENT	Excerpt: 9	Type: Summary
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Nor do we agree with criticisms that suggest that these beneficial uses will lead to a chaotic opening of permits and established TMDLs or that impacted communities will expect unrealistic benefits. Communities understand the complexities of contaminants like mercury, and that it may be future generations that benefit. They simply want to make sure that they do.

Response: Comment noted.

Letter: CH20Aet1, Pg2, P7	COMMENT	Excerpt: 10	Type: Water Quality Objectives
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Furthermore, regional processes will be required to establish a subsistence or tribal designation for waterways and to identify the most effective ways to achieve water quality objectives. These will be deliberative, public processes with input from all interested parties.

Response: Staff agree with these statements, as written in Responses to Comments WSPA2-8, 34 and MercID1-7.

Letter: CH2OAEt1, Pg2, P8	COMMENT	Excerpt: 11	Type: Beneficial Uses
<p>Guidance: We are unclear about the need for Water Board guidance on how these beneficial uses should be adopted or addressed at the Regional Level since reevaluation of 303 (d) listings occur on a regular basis to consider changes in watershed quality, new technologies, and emerging impairment issues (see Staff Report, Section 2.4, paragraph one). However, we have no objection to the development of such guidance, either in the Staff Report or separately, as long as that development includes public input and oversight and does not delay water body designations that may be possible in the year ahead.</p>			
<p>Response: Comment noted. Please see Responses to Comments WSPA2-8, 34 and MercID1-7.</p>			
Letter: CH2OAEt1, Pg3, P1	COMMENT	Excerpt: 12	Type: Support
<p>In 2013 the Water Board expressed a commitment to protect all Californians by developing beneficial uses to protect tribes and others who consume high levels of contaminated fish out of economic need or cultural tradition. We applaud that commitment and the Board's continued dedication to addressing the needs of the vulnerable people of our state for whom we advocate.</p>			
<p>Response: Comment noted. Thank you.</p>			

RDecker1**Author:** Ron Decker **Title:** Mr. **Organization(s):** [Click here to enter text.](#)**Address:** 155 Woodworth Apt H, Clovis, CA 93612 **Interest Group:** Individual**Date:** 1/3/2017**Contact person:** Dawn Koepke **Phone:** (916)930-1993 **E-mail:** [Click here to enter text.](#)

Letter: RDecker1 , Pg1, P1	COMMENT	Excerpt: 1	Type: Split the Project
On behalf of the signatories to this letter, we must respectfully convey our concerns with the proposed Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives under the Inland Surface Waters, Enclosed Bays & Estuaries Plan. Based on the concerns further outlined below, we strongly urge the Board to bifurcate the two proposals going forward.			
Response: Please see Responses to Comments WSPA2-2, 3 and ACWA1-19.			
Letter: RDecker1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
We are concerned that the current process and approach are problematic and the associated timeline contemplated for the proposal hasn't provided sufficient time for the regulated community to digest and understand the relevance and widespread impacts associated with the proposal. Bifurcating the approach, on the other hand, will provide the opportunity for the Board to respond to the USEPA Consent Decree for the development of the Wildlife Mercury Water Quality Objective by the June deadline, while providing sufficient time and opportunity for the regulated community to work with the Board to understand the highly technical proposal and the broad impacts it will have on the regulated community.			
Response: Please see Response to Comment ACWA1-19.			
Letter: RDecker1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Request: More Time
While we can appreciate that the State Water Resources Control Board (SWRCB) has been working on this proposal informally with USEPA and the tribal community for many years via the tribal consultation process and provisions, the regulated community will have had a mere 45 days to review, digest and begin to understand the broad impacts associated with the proposal and associated staff report (724 pages, no less).			
Response: Please see Responses to Comments WSPA2-2 18.			
Letter: RDecker1 , Pg1, P3	COMMENT	Excerpt: 4	Type: Request: More Time
Further, despite the January 9th and February 1st workshops, the regulated community is only just beginning to understand the gravity of the			

Responses to Comments—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 Mercury Provisions.

proposal , barely in time for the February 7th Board hearing, and February 17th comment deadline and adoption late this Spring.			
Response: Please see Responses to Comments WSPA2-2 18.			
Letter: RDecker1 , Pg1, P4	COMMENT	Excerpt: 5	Type: Split the Project
Certainly, we appreciate the importance of considering tribal, tribal cultural and subsistence fishing practices relative to the use of waters of the state. Similarly, we understand the need to consider water quality objectives for mercury to protect the aquatic environment and the wildlife that depends upon it. That said, the pace at which the Board has set to consider these related, but highly distinct proposals is of great concerns as the impacts will be widespread and for the new beneficial uses, apply far more broadly than just for mercury. To the extent possible, the additional time to work with the Board by bifurcating the proposal could result in revisions that may help alleviate the regulated community's serious concerns and provide sufficient time to develop detailed guidance for regional boards in designating waters with these new beneficial uses in a consistent, clear manner across the state.			
Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: RDecker1 , Pg1, P5	NOT COMMENT	Excerpt: 6	Type: Summary
On behalf of the signatories to this letter, we appreciate your consideration of our request to bifurcate the proposal and look forward to continuing to work with the Board to address these significant issues of concern.			
Response: Comment noted.			
Letter: RDecker1 , Pg1, P5	NOT COMMENT	Excerpt: 7	Type: Greet/Ending
If you have questions regarding the points raised in this letter, please contact Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you			
Response: Comment noted.			

CICWQ2**Author:** Mark Grey **Title:** Technical Director **Organization(s):** Construction Industry Coalition on Water Quality**Address:** 2149 E. Garvey Avenue N., Suite A-11, West Covina, Ca 91791 **Interest Group:** INDUSTRY**Date:** 2/17/2017**Contact person:** Mark Grey **Phone:** (916)781-7310, ext. 210 **E-mail:** mgrey@biasc.org

Letter: CICWQ2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the Construction Industry Coalition on Water Quality (CICWQ), Building Industry Defense Foundation (BILD), and California Building Industry Association (CBIA), thank you for the opportunity to provide comments on the proposed 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 Mercury Provisions (Provisions) which was distributed for public review on January 4, 2017 (also here referred to as the “Draft Staff Report”).			
Response: Comment noted.			
Letter: CICWQ2 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary
We are providing summary comments in this letter specific to our memberships, and want to recognize and support the comments submitted to you on this matter by the Association of California Water Agencies and the California Stormwater Quality Association, of which CICWQ is a current member.			
Response: Comment noted.			
Letter: CICWQ2 , Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Summary
CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.			
Response: Comment noted.			
Letter: CICWQ2 , Pg2, P1	NOT COMMENT	Excerpt: 4	Type: Summary

Responses to Comments—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 Mercury Provisions.

BILD is the premier legal advocate for the building and construction industry in California. BILD is a non-profit mutual benefit corporation and a wholly-controlled affiliate of the Building Industry Association of Southern California, Inc. (“BIASC”). BIASC represents approximately 1,200 member companies across Southern California that are active in all aspects of the building industry, including land development; builders of housing, commercial, and infrastructure; and related entities including architects, engineers, planners, contractors, suppliers, and property owners. The purposes of BILD are, in part, to initiate or support litigation or agency action designed to improve the business climate for the building industry and to monitor and involve itself in government regulation critical to the industry			
Response: Comment noted.			
Letter: CICWQ2 , Pg2, P2	NOT COMMENT	Excerpt: 5	Type: Summary
CBIA is a non-profit trade association comprised of approximately 6,500 member companies that are engaged in all aspects of planning, designing, financing, constructing and selling approximately 80% of all new homes built in California each year.			
Response: Comment noted.			
Letter: CICWQ2 , Pg2, P3	COMMENT	Excerpt: 6	Type: Compliance
As an overarching comment and as a representative of the construction sector, we continue to be dismayed by the State’s effort to enact regulation, that upon adoption, would place hundreds, if not thousands, of stormwater discharge permit holders out of compliance, with no clear ability to comply in the future.			
Response: Specific concerns regarding this statement are addressed in the subsequent Responses to Comments.			
Letter: CICWQ2 , Pg2, P3-4	COMMENT	Excerpt: 7	Type: CGP
Our specific comments are as follows:			
I. The Construction General Permit (CGP): The Draft Staff Report finds that the CGP requires sufficient sediment controls such that the implementation program does not include additional requirements for mercury in construction stormwater discharges. We ask that provisions should confirm in Section 3 related to stormwater discharges that CGP Discharge Prohibition C.1, which prohibits nonstormwater discharges that would cause or contribute to a violation of any water quality standard should be exempt from the new mercury water quality objectives (WQO), since such discharges of potable water and groundwater dewatering may contain mercury higher than the stringent new WQO, and there is no technology which construction sites could use to achieve the WQO.			
Response: Currently there are no requirements for the Construction General Permit (CGP) dischargers. If you believe that the CGP as it currently is will not be protective of water quality and therefore needs new requirements to ensure compliance with water quality objectives then please comment upon this in the future. It can be considered in the redrafting of the current CGP.			
Letter: CICWQ2 , Pg2, P5	COMMENT	Excerpt: 8	Type: Stormwater
II. Municipal Separate Storm Sewer System (MS4) permits regulating urban stormwater: Urban stormwater is not a source of mercury according to water quality experts, particularly in Bay Area TMDLs. Further, Bay Area TMDL data indicates that the typical new development and redevelopment mandates, including LID BMP mandates do not control for mercury. Nevertheless, the new, stringent, unattainable WQOs upon adoption will become MS4 permit receiving water limitations. MS4 permittees will be required to expand the			

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reasonable assurance analysis requirements for MS4 permits mandated by 2015-0049, and costs of watershed management plans or other alternative compliance mechanisms will increase to take mercury into account due to the addition of mercury objectives to receiving water limitations. As watershed management plans are modified, new control measures for mercury in urban stormwater will need to be addressed, but there are no effective technologies, and imposing costs for invention, development and implementation of new mercury control technologies supplementary to current LID BMP technologies is not warranted given that urban runoff is an exceedingly minor source of mercury. The Provisions should be modified to clarify that mercury WQOs should be excluded from receiving water limitations.

Response: Provisions Chapter IV.D.3. for storm water discharges only require permittees to comply with the four requirements stated under Provisions. Section IV.D.3.b.1.i. through iv, and do not require the Permitting Authority to conduct a Reasonable Potential Analysis and calculate effluent limitation. The effluent limitations are only for the individual and non-storm water dischargers.

Letter: CICWQ2 , Pg3, P1	COMMENT	Excerpt: 9	Type: Wetlands
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III. Wetlands Regulation. Builders engaging in urban development and discharging fill have an obligation to create new wetlands for water quality treatment purposes, particularly to deal with stormwater, and to compensate for discharges of fill under the Federal and SWRCB No Net Loss Policies, Clean Water Act, and Cal. Fish and Game Code Section 1600 et. seq. The Provisions require new regulation and new requirements in 401 certifications, WDRs, and waivers of WDRs for all projects creating wetlands (as required by law to do) particularly in defined “areas with elevated mercury concentrations.” The regulations and measures to be imposed are not specified, which is a substantive due process problem and precludes any assessment by the regulated community of the potential impact of such regulations on its duty to create wetlands and the costs of doing so. Time should be taken to work with building industry on exactly what the regulations would require for mercury controls.

Response: The Provisions do not create an additional requirements for the development or management of wetlands. Rather, the Provisions reiterate the existing authority that the Water Boards have by stating, “The PERMITTING AUTHORITY has the discretion under existing law to require project applicants that establish (create) or restore wetlands to include design features or management measures to reduce the production or methylmercury in wetlands,…” The Provisions list some possible management measures that may be used and then states that the Permitting Authority, “should consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS”. See Staff Report Sections 7.2.4 and 8.4.4. These are not prescriptive requirements for wetland management.

Letter: CICWQ2 , Pg3, P2	COMMENT	Excerpt: 10	Type: Beneficial Uses
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IV. Tribal Beneficial Use Definitions: Tribal beneficial uses definitions need to be refined to preclude interpretation that they require minimum flow objectives or reintroduction of flows to urban streams. Guidance needs to be given to RWQCBs regarding how, where, and when waterbodies should be designated.

Response: Please see Response to Comment MerCID1-58.

Letter: CICWQ2 , Pg3, P3	NOT COMMENT	Excerpt: 11	Type: Greet/Ending
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We appreciate your consideration of our comments. Should you or your staff have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.

Response: Comment noted.

BVPomo2

Author: Sarah Ryan **Title:** Environmental Director **Organization(s):** Big Valley Band of Pomo Indians

Address: [Click here to enter text.](#) **Interest Group:** CATribes

Date: 2/17/2017

Contact person: [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: BVPomo2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
As the Environmental Director of the Big Valley Band of Pomo Indians I thank you for this opportunity to comment on the SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives			
Response: Comment noted.			
Letter: BVPomo2 , Pg1, P1	NOT COMMENT	Excerpt: 2	Type: General Information
For ease of reference I will subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.			
Response: Comment noted.			
Letter: BVPomo2 , Pg1, P2	COMMENT	Excerpt: 3	Type: Support
We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.			
Response: Comment noted.			
Letter: BVPomo2 , Pg1, P3	COMMENT	Excerpt: 4	Type: Support
It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.			
Response: Comment noted.			
Letter: BVPomo2 , Pg1, P4	COMMENT	Excerpt: 5	Type: Legacy Pollutant

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The legacy of Mercury in California land and waters a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their inherent responsibility to protect the environment that that sustains their Peoples and all living things. When addressing the toxicity that persists from this era it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Provisions.			
Response: Comment noted.			
Letter: BVPomo2 , Pg2, P1	NOT COMMENT	Excerpt: 6	Type: Comment Submission
In order to assist in the success of this Plan and efforts that will stem from it we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions, including the Staff Report the SED and the Provisions within, referred to as the Plan throughout this document:			
Response: Comment noted.			
Letter: BVPomo2 , Pg2, P2	COMMENT	Excerpt: 7	Type: Beneficial Uses
Continued inclusion of CUL, T-SUB and SUB As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subs. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.			
Response: Comment noted.			
Letter: BVPomo2 , Pg2, P3	COMMENT	Excerpt: 8	Type: Support
Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice culture and to eat traditional foods it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete.			
Response: Comment noted.			
Letter: BVPomo2 , Pg2, P4	COMMENT	Excerpt: 9	Type: Support
The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial use definitions.			
Response: Comment noted.			
Letter: BVPomo2 , Pg2, P4	NOT COMMENT	Excerpt: 10	Type: Comments Provided
Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.			
Response: Comment noted.			

Responses to Comments—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 Mercury Provisions.

Letter: BVPomo2 , Pg2, P5	COMMENT	Excerpt: 11	Type: Tribal Subsistence Fishing
<p>Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely “tribal traditional and cultural uses” and “tribal subsistence fishing” in order that they could be applied statewide. Definition development began with the language first adopted by Region 1 and for four years we worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Provisions which unfortunately changed these definitions as follows:</p> <p>In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm that cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase “as affirmed by California Native American Tribe(s),” was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.</p> <p>In the Provisions staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of “minimal,” which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word “fundamental” purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.</p> <p>Response: Please see Response to Comment CIEAetA11-3.</p>			
Letter: BVPomo2 , Pg3, P2	COMMENT	Excerpt: 12	Type: Tribal Subsistence Fishing
<p>Recommendations:</p> <ul style="list-style-type: none"> Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses <p>Response: Please see Response to Comment CIEAetA11-3.</p>			
Letter: BVPomo2 , Pg3, P2	COMMENT	Excerpt: 13	Type: Beneficial Uses
<p>[Remmendations (continued)]</p> <ul style="list-style-type: none"> That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily. <p>Response: Please see Response to Comment CIEAetA11-3.</p>			
Letter: BVPomo2 , Pg3, P2-4	COMMENT	Excerpt: 14	Type: Beneficial Uses
<p>[Reccomendations (continued)]</p> <ul style="list-style-type: none"> We recommend the following revisions to these definitions in order to return them to their original meaning and intent: <p>Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California</p>			

Responses to Comments—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 Mercury Provisions.

<p>Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]</p> <p>Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal [fundamental] needs for sustenance.</p>			
<p>Response: Please see Response to Comment CIEAETAI1-3.</p>			
Letter: BVPomo2 , Pg3, P5-6-	COMMENT	Excerpt: 15	Type: Water Quality Objectives
<p>Bioavailability of Mercury</p> <p>We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bioaccumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations. 			
<p>Response: Please see Response to Comment CIEAETAI1-4.</p>			
Letter: BVPomo2 , Pg4, P1	COMMENT	Excerpt: 16	Type: Beneficial Uses
<p>Current and Future Use of the Beneficial Use Provisions:</p> <p>Page xvii of the Executive Summary states that “the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established.” This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word “is.”</p>			
<p>Response: Please see Response to Comment CIEAETAI1-5.</p>			
Letter: BVPomo2 , Pg4, P2	COMMENT	Excerpt: 17	Type: Water Quality Objectives
<p>Page xviii states that associated mercury WQOs related to subsistence beneficial uses (TSUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.</p>			
<p>Response: Please see Response to Comment CIEAETAI1-5.</p>			
Letter: BVPomo2 , Pg4, P3	COMMENT	Excerpt: 18	Type: Water Quality Objectives
<p>Recommendations:</p> <ul style="list-style-type: none"> • That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments. 			

Response: Please see Response to Comment CIEAEtA11-5.			
Letter: BVPomo2 , Pg4, P3	COMMENT	Excerpt: 19	Type: TMDL
[Reccomendations (continued)]			
<ul style="list-style-type: none"> That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates. 			
Response: Please see Response to Comment CIEAEtA11-5.			
Letter: BVPomo2 , Pg4, P3	COMMENT	Excerpt: 20	Type: Beneficial Uses
[Reccomendations (continued)]			
<ul style="list-style-type: none"> We recommend that this forward thinking sentiment also be extended explicitly in the Plan to the continued application of Tribal Cultural beneficial use. 			
Response: Please see Response to Comment CIEAEtA11-5.			
Letter: BVPomo2 , Pg4, P4	COMMENT	Excerpt: 21	Type: Water Quality Objectives
Strengthening of the T-SUB Water Quality Objectives			
<p>This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is “the same as the U.S. EPA nationally recommended subsistence rate.”</p> <p>The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.</p> <p>Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.</p>			
Response: Please see Response to Comment CIEAEtA11-6.			
Letter: BVPomo2 , Pg5, P2	COMMENT	Excerpt: 22	Type: T-Sub Objective
We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of Responses to Comments—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 Mercury Provisions.			

<p>implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California’s beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 85417, November 28, 2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems.</p>			
<p>Response: Please see Response to Comment CIEAETAl1-6.</p>			
Letter: BVPomo2 , Pg5, P3	COMMENT	Excerpt: 23	Type: Water Quality Objectives
<p>The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported “CA Tribal Fish Consumption Study” (SWRCB- UC Davis, 2016), which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% TL3/30% TL4 mixture, and that all Tribes do not consume the same fish species.</p> <p>Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available. When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.</p>			
<p>Response: Please see Response to Comment CIEAETAl1-6.</p>			
Letter: BVPomo2 , Pg6, P1	COMMENT	Excerpt: 24	Type: Support
<p>We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides and overview of CA Tribal fish consumption patterns it is not exhaustive and it can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.</p>			
<p>Response: Please see Response to Comment CIEAETAl1-6.</p>			
Letter: BVPomo2 , Pg6, P2	COMMENT	Excerpt: 25	Type: Anti-backsliding, Anti-degradation
<p>We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.</p>			
<p>Response: Please see Response to Comment CIEAETAl1-6.</p>			

Letter: BVPomo2 , Pg6, P3	COMMENT	Excerpt: 26	Type: Recommended Changes
<p>Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows</p> <ul style="list-style-type: none"> • That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) based on a fish consumption rate of 175 grams per day, allowing safe consumption of fish at 5-6 meals per week, • That the Plan affirm that this WQO is a minimum statewide standard, • That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level • That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat, and • That the Plan include language regarding the applicable state and federal antidegradation or anti-backsliding provisions • It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals per week. 			
Response: Please see Response to Comment CIEAEtA11-6.			
Letter: BVPomo2 , Pg6, P4	COMMENT	Excerpt: 27	Type: Water Quality Objective
<p>CUL Water Quality Objective Considerations</p> <p>We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.</p>			
Response: Please see Response to Comment CIEAEtA11-7.			
Letter: BVPomo2 , Pg7, P1	COMMENT	Excerpt: 28	Type: Mercury Exposure
<p>Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.</p>			
Response: Please see Response to Comment CIEAEtA11-7.			
Letter: BVPomo2 , Pg7, P2	COMMENT	Excerpt: 29	Type: Recommendation
<p>Recommendation: 6.6 Issue F. – Yes, Option 3/amended as follows</p> <ul style="list-style-type: none"> • We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses. • That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses. 			
Response: Please see Response to Comment CIEAEtA11-7.			

Responses to Comments—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 Mercury Provisions.

Letter: BVPomo2 , Pg7, P3-4	COMMENT	Excerpt: 30	Type: RFC
<p>Revisit the RFC</p> <p>The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).</p> <p>The calculation for the Mercury WQOs to protect human health describes the RSC as follows:</p> <p>RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day.</p> <p>Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?</p> <p>Recommendation:</p> <ul style="list-style-type: none"> That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation. 			
Response: Please see Response to Comment CIEAEtA11-8.			
Letter: BVPomo2 , Pg7, P5	COMMENT	Excerpt: 31	Type: Beneficial Uses
<p>Evidence in Designating Beneficial Uses</p> <p>On Pg. 111 the Plan text states that "The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses." The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils.</p>			
Response: Please see Response to Comment CIEAEtA11-9.			
Letter: BVPomo2 , Pg8, P1	COMMENT	Excerpt: 32	Type: Beneficial Uses
<p>We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: "However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition." There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.</p>			

Responses to Comments—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 Mercury Provisions.

Response:			
Letter: BVPomo2 , Pg8, P2	COMMENT	Excerpt: 33	Type: Tribal Consultation?
<p>Recommendation:</p> <ul style="list-style-type: none"> That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level. 			
Response: Please see Response to Comment CIEAEtA11-9.			
Letter: BVPomo2 , Pg8, P2	COMMENT	Excerpt: 34	Type: Language Change
<p>[Recommendation (continued)]</p> <ul style="list-style-type: none"> That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use. 			
Response: Please see Response to Comment CIEAEtA11-9.			
Letter: BVPomo2 , Pg8, P3-4	COMMENT	Excerpt: 35	Type: Trophic Level 4 Fish
<p>Expand Examples of Trophic Level 4 Fish</p> <p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> Include sturgeon in the definition section of the Plan text as follows: TROPHIC LEVEL 4 FISH (TL4): Fish that consume TROPHIC LEVEL 3 fish and other aquatic organisms. [Examples of these s]pecies include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C. 			
Response: Please see Response to Comment CIEAEtA11-10.			
Letter: BVPomo2 , Pg8, P5	COMMENT	Excerpt: 36	Type: Tribal Consultation
<p>Include information regarding Tribal Consultation</p> <p>We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that:</p> <p>“Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of</p>			

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actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))”

This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order B10-11.

Recommendation:

- That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, “Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes.” Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal selfgovernment and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal

cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those polies. One example is the policy developed by the Karuk Tribe.

Response: Please see Response to Comment CIEAEtA11-11.

Letter: BVPomo2 , Pg10, P4-5	COMMENT	Excerpt: 37	Type: Beneficial Uses
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in “Loleta (Eureka).” This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in Loleta not Eureka. We recommend simply removing Eureka from that location descriptor.

Response: Please see Response to Comment CIEAEtA11-12.

Letter: BVPomo2 , Pg10, P6	COMMENT	Excerpt: 38	Type: Beneficial Uses
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Statement of Necessity for Beneficial Uses

In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain “to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.” (Resolve Clause No. 1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, REC1, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:
these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider

adopting the beneficial use] definitions proposed by staff as part of the Provisions in order “to create a consistent set of beneficial uses to be used” (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan...

Response: Please see Response to Comment CIEAetA11-13.

Letter: **BVPomo2**, Pg11, P2-4

COMMENT

Excerpt: 39

Type: Fish Consumption

Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus atrisk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

Response: Please see Response to Comment CIEAetA11-14.

Letter: **BVPomo2**, Pg12, P1

NOT COMMENT

Excerpt: 40

Type: Greet/Ending

Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Comment noted.

CSERC1**Author:** Meg Layhee et al **Title:** Aquatic Biologist **Organization(s):** Central Sierra Environmental Resource Center**Address:** P.O. Box 396 Twain Harte, CA 95383 **Interest Group:** Environmental**Date:** 2/8/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: CSERC1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
This letter is submitted in response to the solicitation of input regarding the State Water Board’s Draft Staff Report, including SED in developing a statewide water quality control program for mercury-related water quality objectives (WQOs), tribal and subsistence beneficial uses, and a program of implementation for mercury dischargers (collectively being called Mercury Provisions) for the protection of humans and wildlife that consume fish.			
Response: Comment noted.			
Letter: CSERC1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary
Our Center, the Central Sierra Environmental Resource Center (CSERC), is a non-profit environmental organization in Tuolumne County. Our staff has worked to protect water, fish and wildlife in Northern Yosemite Region within the Mokelumne, Stanislaus, Tuolumne, and Merced River watersheds for the last 25 years.			
Response: Comment noted.			
Letter: CSERC1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Summary
CSERC acknowledges that human activities have historically and currently caused measurable increases in inorganic mercury in surface waters and in levels of bioaccumulated methylmercury in aquatic organisms. Not only are the existing statewide regulatory limits for mercury for water in the California Toxics Rule criteria (50 ng/L3 water and aquatic organisms and 51 ng/L3 aquatic organisms only) not reflective of the most recent U.S. EPA Clean Water Act 304(a) recommended human health criterion for mercury (0.3 mg/kg methylmercury in total fish, given a consumption rate of fish of 17.5 g/day), but there are currently no statewide objectives or criteria to protect wildlife.			
Response: Comment noted.			
Letter: CSERC1, Pg1, P3	COMMENT	Excerpt: 4	Type: Support
Therefore, our Center is in agreement with the SWB’s development of water quality objectives, beneficial uses, and other provisions (program of			

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implementation for dischargers) for mercury to better protect human health and also for the protection of fish and wildlife.			
Response: Comment noted. Thank you for your support.			
Letter: CSERC1 , Pg1, P3	NOT COMMENT	Excerpt: 5	Type: Summary
In our region there are several reservoirs (New Melones, Tulloch, Hetch Hetchy, Don Pedro, and Lake McClure) and river reaches (Stanislaus, Tuolumne, and Merced Rivers) that are listed in California’s 2010 Integrated Report for mercury pollution. Our region also contains many historic, abandoned mines that contribute to increased mercury levels in downstream waterbodies.			
Response: Comment noted.			
Letter: CSERC1 , Pg1, P3	COMMENT	Excerpt: 6	Type: Support
Our Center finds the adoption of mercury provisions that protect human and wildlife health to be invaluable to our region’s freshwater ecosystems and people.			
Response: Comment noted. Thank you for your support.			
Letter: CSERC1 , Pg2, P1	COMMENT	Excerpt: 7	Type: Legacy Mines
CSERC emphasizes that there should be: 1) numeric fish tissue, water column and narrative objectives for mercury concentrations 2), establishment of a fish consumption rate for the Sport Fish Water Quality Objective to best protects human health 3), adoption of a water quality objective that best protects sensitive endangered species (the RARE beneficial use), 4) adoption of a statewide wildlife water quality objective - especially for waters with trophic level ≤ 3 and protection of wildlife consuming trophic level ≤ 3 that will best protect wildlife, 5) requirement for dischargers (subject to California Code of Regulations, title 22, section 22510) or public and private landowners whose activities disturb soils containing mercury to implement erosion and sediment measures to control mercury or to prohibit these activities altogether, and 6) a strategy to identify and prioritize legacy/abandoned mine sites and mining waste for cleanup.			
Response: Regarding items 1 through 5, the Provisions support these principals. Regarding item 6, the strategy to identify and prioritize legacy or abandoned mine sites, Section 6.9 of the Staff report discusses the issues and options related to legacy mines. As stated in the Staff Report, “The Department of Conservation is now developing a prioritization strategy to address hazards from 47,000 abandoned mines sites.” Mercury should be one of the considerations in prioritizing mine site clean-up projects. Chapter IV.D.4 of the Provisions “require dischargers to implement erosion and sediment control measures to prevent or control mercury in discharges when adopting, re-issuing, or modifying WDRs or waivers of WDRs for dischargers subject to the requirements of Title 27 of the California Code of Regulations, section 22510 (closure and post-closure of mining sites), from land where mercury was mined or mercury was used during ore processing.”			
Letter: CSERC1 , Pg2, P2	NOT COMMENT	Excerpt: 8	Type: Summary
Our staff recommends that several changes be made in the final report. The following sections contain detailed comments regarding recommendations and comments from our staff:			
Response: Please see Responses to subsequent Comments below.			
Letter: CSERC1 , Pg2, P3-4	COMMENT	Excerpt: 9	Type: Support
Issue A- What type of water quality objectives should be adopted: numeric water column objectives, numeric fish tissue objectives, numeric			

sediment objectives, or narrative objectives?			
<p>In terms of which type of mercury water quality objective the SWB should adopt, CSERC agrees with the SWB in that a Numeric Fish Tissue Objective (Option 2) should be adopted for the protection of human health. Our staff understands that a Narrative Objective would provide language to protect human health in the absence of site-specific consumption information. We recommend that SWB adopt Numeric Fish Tissue Objective Option 2 and put language within Option 2 that says a Narrative Objective (Option 5) will be used for SUB beneficial use if there is no site-specific consumption information then a Narrative Objective would be used under the SUB beneficial use.</p>			
Response: Comment noted. Thank you for your support.			
Letter: CSERC1 , Pg2, P5	COMMENT	Excerpt: 10	Type: Water Quality Objectives
<p>Furthermore, CSERC urges the SWB to consider adopting a Numeric Water Column Objective (Option 3) in addition to a Numeric Fish Tissue Objective to better regulate inorganic mercury levels in surface waterbodies. In the report it states, “disadvantage of this option [Option 2] is that it does not utilize measurement of concentrations of pollutants in water, which is the most widely-used method to develop reasonable potential analyses and final effluent limitations for discharges, and monitoring and reporting requirements for both discharges and receiving water bodies”. Our staff does understand that it would be more costly to implement the Numeric Water Column Objective, however, we see value in better understanding mercury levels in California’s waterbodies not just within fish tissue for the protection of human health, and fish and wildlife. Option 4 (Numeric Sediment Objective) would also better estimate mercury contamination levels in waterbodies better than a fish tissue objective, however, our staff believes that a water column objective would best achieve this.</p>			
Response: Section 6.1.2 of the Staff Report points out that “A typical water quality objective is expressed as a numeric concentration of the contaminant in water because toxicity is usually the result of drinking the pollutant in the water or exposure to the pollutant in the water. On the other hand, while methylmercury is a chemical that is present as a pollutant in water, it is not until the methylmercury bioaccumulates to high concentrations in fish that it becomes hazardous to the organisms that consume the fish.” The Staff Report points out that in Section 6.13 that mercury does not bioaccumulate at the same rate in all water types. Therefore, a single mercury water quality objective, based on mercury concentration in water is not appropriate. Rather, mercury objectives are more appropriately based on fish tissue concentrations to assure protection of wildlife and people consuming fish. Translators are used to derive effluent limits for point source dischargers with NPDES permits. Effluent limits are based on the water body type that the discharge is entering into. Site-specific translators may be developed as needed; please see Response to Comment CVCWA1-13.			
Letter: CSERC1 , Pg2, P6	COMMENT	Excerpt: 11	Type: Consumption Rate
Issue B- What fish consumption rate should be used to calculate the Sport Fish Water Quality Objective to protect human health?			
<p>CSERC agrees with the SWB recommendation to adopt a statewide fish consumption rate (based on mercury in fish tissue) to calculate the Sport Fish Water Quality Objective since there is not one clearly established statewide policy regarding consumption rates for recreational consumption of fish. Our Center urges the SWB adopt Option 1, the objective that is equivalent to the EPA’s 2001 human health criterion, a more conservative fish consumption rate of 0.3 mg/kg methylmercury in fish tissue at a fish consumption rate of one meal every two weeks. This</p>			

would equate to 0.15 mg/kg at a rate of one meal per week, which is lower than the SWB's recommended objective of 0.2 mg/kg at a rate of one meal per week.			
Response: A consumption rate of one meal every two weeks was considered. Although U.S. EPA derived recommended fish tissue mercury levels based on one meal every two weeks, as discussed in Section 6.2.1 of the Staff Report, U.S. EPA recommends individual states adjust the fish consumption rate based on local information. The Water Boards and other state agencies have used a consumption rate of one meal per week based on a 2000 survey of anglers in the San Francisco Bay. If the Board were to adopt option, 1 it is unlikely to be fully protective of all wildlife species and an additional wildlife objective would need to be applied to all waters with the WILD beneficial use. On the other hand, an objective based on one meal per week in trophic level four fish, such as bass, is expected to be fully protective of most wildlife species.			
Letter: CSERC1, Pg3, P2	COMMENT	Excerpt: 12	Type: Consumption Rate
In addition, Option 4, the Phased Approach, would in theory ultimately result in better protection of sub-populations of people who consume large quantities of fish (5 meals a week at 0.05 mg/kg methylmercury in fish tissue). Therefore, our Center urges SWB to consider adopting Option 4 for fish consumption rates to calculate Sport Fish Water Quality Objective and starting out with Option 1 (0.3 mg/kg methylmercury in fish tissue at a rate of one meal every two weeks).			
Response: Comment noted, however as noted in the staff report if a water quality objective of 0.3 mg/KG were adopted an additional objective to protect wildlife would be required. Finally, for the protection of the SUB beneficial use the provisions include a narrative water quality objective to account for the variability in consumption rates in California.			
Letter: CSERC1, Pg3, P2	COMMENT	Excerpt: 13	Type: Consumption Rate
Then after several decades, the SWB should try to establish concentrations that would achieve an ultimate consumption rate" that would better protect those that consume fish > once a week, but that the ultimate consumption rate be more conservative at 0.03 mg/kg at a rate of five meals per week as opposed to the suggested amount and rate in the Draft Report (0.05 mg/kg at a rate of five meals per week).			
Response: Comment noted. Such an approach would appropriately be considered during the designation of the beneficial uses or would be appropriate factors to consider when adopting a water quality variance..			
Letter: CSERC1, Pg3, P3	COMMENT	Excerpt: 14	Type: Support
Issue C- To which fish species should the Sport Fish Water Quality Objective apply?			
CSERC agrees with the SWB proposed adoption of Option 1 for the Sport Fish Water Quality Objective to the top trophic level, usually trophic level 4 fish (e.g., largemouth bass, small mouth bass, spotted bass, white catfish, channel catfish, Sacramento pike minnow, crappie, black crappie). However, if there are no trophic level 4 fish present within a waterbody then trophic level 3 fish (e.g., trout, bluegill, common carp, golden shiner, red ear sunfish, yellowfin goby, black bull head, brown bullhead) would be used to measure mercury bioaccumulation levels			
Response: Thank you for your support.			
Letter: CSERC1, Pg3, P4	COMMENT	Excerpt: 15	Type: Support
Our Center agrees that there should be wording to specify direction for waterbodies that do not have trophic level 4 fish species present, but where elevated levels of methylmercury in fish tissue still exists.			

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Response: Thank you for your support.			
Letter: CSERC1 , Pg3, P4	COMMENT	Excerpt: 16	Type: Support
In addition, even though realistically most people eat a mixture of trophic level 3 and trophic level 4 fish, however, the levels of methylmercury are much higher in trophic level 4 compared to trophic level 3 fish so if people are eating any proportion of trophic level 4 fish then the levels will most likely be substantially higher and risk to health much higher. Therefore Option 2 is not conservative enough, and our staff urges the SWB to not adopt Option 2.			
Response: Comment noted. Thank you for your support.			
Letter: CSERC1 , Pg3, P4	COMMENT	Excerpt: 17	Type: Support
Our Center also disagrees strongly with Option 3 (apply objective to only native species) since are large proportion of top predatory trophic level 4 fish that people catch and consume are non-native, so unless there is a complete eradication and removal of non-native trophic level 3 or 4 fish, then there is a high chance that people will continue to consume non-native fish that have high levels of methylmercury.			
Response: The Staff Report does not recommend Option 3. Thank you for your support.			
Letter: CSERC1 , Pg4, P1-2	COMMENT	Excerpt: 18	Type: Support
Issue D- Should the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses?			
CSERC agrees with the SWB recommendation to establish beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing.			
Response: Thank you for your agreement.			
Letter: CSERC1 , Pg4, P3	COMMENT	Excerpt: 19	Type: Water Quality Objectives
Issue E- What water quality objective (s) should be adopted for subsistence fishing by tribes (T-SUB) and other subsistence fishers (SUB)?			
CSERC urges the SWB to adopt numeric water quality objectives for both tribal subsistence fishing and subsistence fishing.			
Response: Thank you for the support regarding the Staff Report's recommendation to adopt a numeric mercury water quality objective for the T-SUB beneficial use. Regarding the recommendation to not adopt a numeric mercury water quality objective for SUB, please see Response to Comment WSPA2-14.			
Letter: CSERC1 , Pg4, P4	COMMENT	Excerpt: 20	Type: Water Quality Objectives
For tribal subsistence fishing the fish mercury concentration of 0.04 mg/kg as a mixture of 70 percent trophic level 3 fish and 30 percent trophic level 4 fish (to protect consumption of four to five meals a week) should be reduced to 0.03 mg/kg at four to five meals a week, that is more conservative and in line with recommendations made for the Sport Fishing Objective.			
Response: Presuming that Commenter's 0.03 mg/kg fish tissue concentration calculation is based on a suggested rate of 175 grams/day, please see Response to Comment CIEAETAI1-6.			

Letter: CSERC1 , Pg4, P4	COMMENT	Excerpt: 21	Type: Water Quality Objectives
In addition, our staff urge the SWB to adopt a numeric water quality objective for subsistence fishing of 0.03 mg/kg in top trophic level fish at four to five meals a week (Option 3).			
Response: Please see Response to Comment CIEAETa11-6.			
Letter: CSERC1 , Pg4, P5	COMMENT	Excerpt: 22	Type: Support
Issue F- What mercury water quality objective should be adopted to protect the Tribal Tradition and Culture (T-SUB) beneficial use?			
Our Center understands that setting accurate objectives for any pollutant would require detailed study of the specific Tribe's use or uses of the waterbody wherever CUL may be designated. CSERC encourages the SWB to take into consideration suggestions and comments from various tribes throughout the state and go with the option that best reflects the requests of tribes. We agree with the SWB recommendation to apply the Sport Fish Water Quality Objective to the Tribal Tradition and Culture beneficial use.			
Response: Thank you for the support.			
Letter: CSERC1 , Pg4, P7-8	COMMENT	Excerpt: 23	Type: Water Quality Objective
Issue G- What water quality objective should be adopted to protect sensitive endangered species (the RARE beneficial use) and to what waters should the objective apply?			
CSERC urges the SWB to adopt a mercury water quality objective that would protect sensitive or endangered species. Since there are currently no statewide objectives or criteria to protect wildlife from mercury in California, our Center urges the SWB to adopt Option 2 (0.03 mg/kg methylmercury in small prey fish) that would apply the California Least Tern Water Quality Objective statewide, not just in USFWS management areas for the species, but apply this objective statewide regardless of whether the area is within the Least Tern's species range. Other small birds sensitive to mercury could remain at risk if Option 3 (objective only to apply in USFWS management areas for the California Least Tern) were adopted. Option 2 is the only alternative that would protect all wildlife sensitive to mercury statewide.			
Response: Regarding the justification for not using the California Least Tern Water Quality Objective as a statewide objective for all waterbodies designated with RARE, please see Section 6.7 and Appendix K of the Staff Report.			
Letter: CSERC1 , Pg4, P9	COMMENT	Excerpt: 24	Type: Support
Issue H- Should a water quality objective be adopted that is specifically for the protection of wildlife statewide?			
CSERC urges the SWB to adopt the SWB recommended water quality objective specifically for the protection of wildlife statewide referred to as the Prey Fish Water Quality Objective. This is a critical objective needed, because even if the Sport Fish and Least Tern water quality objectives are adopted, these two objectives will not provide specific protection for all listed species, sensitive species, and other wildlife that are affected by bioaccumulation of mercury in surface waters; species including osprey, bald eagle, belted king fisher, grebe and merganser (SED p. 125). As mentioned in the report, many surface waters, like in our region (Sierra Nevada) do not support trophic level 4 fish, but are inhabited primarily by trout, and if 0.2 mg/kg objective is applied to trout, it is not clear if wildlife that eats lower trophic level fish, or prey fish, that they would be			

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protected (SED p. 125). Therefore, our Center agrees with the comments made in the report, that there should be a Prey Fish Water Quality Objective adopted that directly applies to waters that lack trophic level 4 fish, but instead have trophic level 3 fish, and smaller trophic level fish (e.g., California roach, riffle sculpin, juvenile trout) 50-150 mm in length at 0.05 mg/kg methylmercury in all waters.			
Response: Thank you for your statement of agreement.			
Letter: CSERC1 , Pg5, P2-3	COMMENT	Excerpt: 25	Type: Legacy Mining
Issue I- How should legacy mine sites and mining wastes be addressed?			
CSERC agrees with the SWB that dischargers subject to California Code of Regulations, title 22, section 22510 should have to implement erosion and sediment control measures to control mercury when the discharge is from land where mercury was mined or mercury was used during ore processing (Option 2). However, our Center also urges the SWB to also adopt Statewide Mine Prioritization Strategy (Option 3) to identify and prioritize legacy/abandoned mine sites and mining waste for cleanup, focusing on the worst sites first. With 47,000 abandoned mines sites that the Department of Conservation is now developing a prioritization strategy to address hazards for, it is critical that the SWB implement a Statewide Mine Prioritization Strategy to address the mercury contamination that is mostly originating from these 47,000 abandoned mines verses current mining operations.			
Response: As described in Sections 6.9.3 of the Staff Report, the principal disadvantage of a Mine Prioritization Strategy, or Option 3, is a lack of funding for both state and local agencies. Adopting such a strategy statewide in addition to the recommended option adds demands in addition to what is required to monitor and enforce implement erosion and sediment control to control mercury. Therefore, the Staff Report recommends Option 2 at this time.			
Letter: CSERC1 , Pg5, P4	COMMENT	Excerpt: 26	Type: Non-Point Source
Issue J- How should dredging, wetlands, and nonpoint sources be addressed?			
CSERC agrees that the SWB does have authority and should provide guidance and require action be taken in areas where nonpoint sources of mercury and methylmercury production occur and in areas where elevated mercury concentrations exist, what we'll call high mercury areas (e.g., naturally mercury-enriched soils at \geq 1ppm, a site with sediments or soils with mercury concentrations \geq 1ppm, or historical mercury or gold tailings or historic hydraulic gold mining pits in the Sierra Nevada Mountains). Our Center urges the SWB to adopt this Option 2, and emphasize, "under existing law the Water Boards have discretion to address nonpoint source discharges of mercury and methylmercury production in wetlands and the Water Boards should consider such implementation measures in areas with elevated mercury concentrations". However, our Staff urges the SWB to use language that says dischargers in high mercury areas will be required to implement sediment and erosion control measures, that there will be downstream monitoring by the regulatory agency to determine if the dischargers are in compliance, and if control measures do not control increased re-suspension and methylation then the discharger must cease operations (referring to language in SED under Issue J, Option 2, paragraph 2, p. 133).			
Response: See response to ACWA1 – 201, regarding a language change the Regional Water Boards have the discretion to determine if downstream monitoring and additional controls are necessary.			

Letter: CSERC1 , Pg6, P1-2	COMMENT	Excerpt: 27	Type: NPDES
Issue K- What should be required of NPDES storm water dischargers?			
<p>Our Center understands that storm water dischargers cannot control background sources of mercury that are deposited from the atmosphere, but that dischargers are responsible for controllable sources of mercury from construction activities, road maintenance, and improperly disposed industrial products (e.g., batteries, florescent tubes, or switches containing mercury), which can increase erosion during storms and carry mercury enriched sediment to surface waters. Therefore, storm water dischargers have a responsibility to control mercury transported in storm water. CSERC urges the SWB to require storm water dischargers to implement specific mercury pollution prevention and pollution control measures to reduce mercury or methylmercury discharges through the methods outlined on pages 138-139.</p>			
Response: The methods outlined on pages 138-139 are essentially what this Policy is proposing.			
Letter: CSERC1 , Pg6, P3	COMMENT	Excerpt: 28	Type: IGP
<p>CSERC also urges the SWB to reduce the target concentration for mercury, aka the Numeric Action Level, in the Industrial General Permit. Although, our Center asks that the SWB verify whether the recommended 300 ng/L total mercury for the Numeric Action Level is in fact the lowest level that current monitoring equipment can detect at.</p>			
Response: The 300ng/L NAL is based on the Method Quantitation Limit (also called Minimum Level or Reporting Limit) for USEPA Methods 245.1 & 245.2 (200 ng/L) which are the most practicle and economical methods for industrial stormwater dischargers			
Letter: CSERC1 , Pg6, P4	COMMENT	Excerpt: 29	Type: IGP
<p>Our Center also urges the SWB to require any permittee including recycling facilities, dismantling yards, scrap and waste material facilities, or metal mining facilities, in addition to Hazardous Waste Facilities, that handle mercury or mercury-containing materials as part of their industrial process, to be mandated to monitor mercury levels leaving their facilities.</p>			
Response: This is beyond the scope of this project. Changing the Industrial General Permit to require facilities otherwise not required to sample for mercury per the Federal Regulations will not be included in the adoption of this Policy. However, the Regional Water Quality Control Boards can require additional monitoring if they decide it is necessary.			
Letter: CSERC1 , Pg6, P5	COMMENT	Excerpt: 30	Type: Typo
<p>In addition it appears that Option 4 is missing from the report or Option 5 was mistyped and should be Option 4.</p>			
Response: Thank you for noting the error. Issue K Option 5 has been changed to Option 4 in the Staff Report.			
Letter: CSERC1 , Pg6, P6-7	COMMENT	Excerpt: 31	Type: Support
Issue L- What procedure should be used to determine which municipal wastewater and industrial dischargers would need effluent limitations?			
<p>CSERC agrees that a process is needed to determine which wastewater and industrial discharges need effluent limitations established for mercury. CSERC also agrees with the SWB recommendations to use mercury concentration in the water column for the purposes of determining which municipal wastewater and industrial dischargers would need effluent limitations (Clean Water Act standard of performance reflecting a</p>			

specified level of discharge reduction achievable by the best available technology for mercury).			
Response: Comment noted, thank you for your support.			
Letter: CSERC1 , Pg6, P8-9	COMMENT	Excerpt: 32	Type: Support
Issue M- How should the effluent limitations be calculated for municipal wastewater and industrial discharges?			
CSERC agrees with the SWB recommendations to calculate effluent limitations for municipal wastewater and industrial dischargers based on water body type and bioaccumulation factors.			
Response: Thank you for this comment in support of the proposed recommendations.			
Letter: CSERC1 , Pg6, P9	COMMENT	Excerpt: 33	Type: ???
The SWB should provide incentives to upgrade wastewater treatment facilities to the tertiary level of treatment, which would likely meet water column thresholds and have multiple benefits to the environment beyond just controlling for mercury (p. 151).			
Response: Commenter does not detail specific incentives and therefore Staff cannot adequately address the comment.			
Letter: CSERC1 , Pg7, P1-2	COMMENT	Excerpt: 34	Type: ???
Issue N- Should the Provisions include a public exposure reduction program?			
CSERC agrees that continued public education is needed to help people understand the risks of consuming fish that are contaminated with mercury. We support the SWB partnering with the California Department of Public Health and the Office of Environmental Health Hazard Assessment to continue to support these agencies with data, and recommend they continue this work.			
Response: Thank you for your support.			
Letter: CSERC1 , Pg7, P3	COMMENT	Excerpt: 35	Type: ???
Conclusion			
In conclusion, CSERC recommends that the SWB adopt water quality objectives, beneficial uses, and a program of implementation for mercury dischargers to protect human and wildlife health. Mercury contamination from historical and current human activities can result in unsafe water quality conditions in certain waterbodies statewide and can create unsafe levels of bioaccumulated methylmercury in freshwater fish in our state's inland waters. Our Center reiterates that it is pertinent for the SWB to establish water quality objectives for mercury that will protect wildlife since there are currently no statewide objectives or criteria to protect wildlife from mercury in California.			
Response: Thank you for your support as in efforts to control and remediate mercury and methylmercury contamination.			
Letter: CSERC1 , Pg7, P4	COMMENT	Excerpt: 36	Type: ???
Briefly we suggest that there be:			
1) A numeric fish tissue, a water column and a narrative objective for mercury			

Response: “When a water quality control plan designates a water body or water body segment with the Subsistence Fishing (SUB) beneficial use, development of a region-wide or site-specific numeric fish tissue mercury water quality objective is recommended to account for the wide variation of consumption rate and fish species encompassed by the SUB beneficial use.” Please also see MerclD1-45. Also please see Response to Comment WSPA2-78 regarding rationale for development of objectives. Please see Response to Comment WSPA2-80 for calculation of water column targets. In addition, please see Response to Comment ACWA1-25.			
Letter: CSERC1 , Pg7, P5	COMMENT	Excerpt: 37	Type: Consumption Rate
[Briefly we suggest that there be:]			
2) Adoption of a fish consumption rate for the Sport Fish Water Quality Objective to best protects human health at a level equivalent to the EPA’s 2001 human health criterion of 0.3 mg/kg methylmercury in fish tissue at a fish consumption rate of one meal every two weeks (which would equate to 0.15 mg/kg at a rate of one meal per week) which is lower than the SWB’s recommended objective of 0.2 mg/kg at a rate of one meal per week.			
Response: See Response to WSPA2-75, 76 and ACWA1-9.			
Letter: CSERC1 , Pg7, P6	COMMENT	Excerpt: 38	Type: Water Quality Objective
[Briefly we suggest that there be:]			
3) That trophic level 4 fish should be applied to the Sport Fish WQO (e.g., largemouth bass, small mouth bass, spotted bass, white catfish, channel catfish, Sacramento pike minnow, crappie, black crappie), unless there are no trophic level 4 fish present within a waterbody then trophic level 3 fish (e.g., trout, bluegill, common carp, golden shiner, etc.) should be used to measure mercury bioaccumulation levels.			
Response: Please see Responses to Comments MerclD1-47 and 48. In addition, also see Appendix A, Attachment B.			
Letter: CSERC1 , Pg7, P7	COMMENT	Excerpt: 39	Type: Beneficial Uses
[Briefly we suggest that there be:]			
4) Adoption and establishment of beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing.			
Response: Comment noted.			
Letter: CSERC1 , Pg7, P8	COMMENT	Excerpt: 40	Type: Water Quality Objective
[Briefly we suggest that there be:]			
5) Adoption of a water quality objective that best protects sensitive endangered species (the RARE beneficial use) specifically Option 2- California Least Tern Water Quality Objective statewide (0.03 mg/kg methylmercury in small prey fish) to protect the California least tern and all sensitive wildlife species. Option 2 is the only alternative that would protect all wildlife sensitive to mercury statewide.			
Response: Staff do not recommend Option 2. The justifications for not recommending Option 2 for are detailed in Section 6.7 of the Staff			

Report.			
Letter: CSERC1, Pg8, P1	COMMENT	Excerpt: 41	Type: Water Quality Objective
[Briefly we suggest that there be:]			
6) Adoption of a Prey Fish Water Quality Objective that directly applies to waters that lack trophic level 4 fish, but instead have trophic level 3 fish, and smaller trophic level fish (e.g., California roach, riffle sculpin, juvenile trout) 50-150 mm in length at 0.05 mg/kg methylmercury in all waters.			
Response: Section 6.8.3 of the Staff Report does discuss the issue of increase in monitoring needs for both the Prey Fish Water Quality Objective and the Sport Fish Water Quality Objective. The Staff Report states that, "...the monitoring for 50-150 mm prey fish could be prioritized to waters where there are no trophic level 4 fish. Monitoring for 50-150 mm prey fish could be a lower priority where sport fish monitoring applies to trophic level 4 fish." Since there is no specific requirement for dischargers to conduct fish monitoring programs and when fish monitoring is conducted specific sizes and trophic levels can be targeted, depending on the types and sizes of the available fish, the additional objectives should not have an appreciable effect on monitoring costs.			
Letter: CSERC1, Pg8, P2	COMMENT	Excerpt: 42	Type: Abandoned Mines
[Briefly we suggest that there be:]			
7) Requirement that dischargers (subject to California Code of Regulations, title 22, section 22510) or public and private landowners, or any member of the public whose activities disturb soils containing mercury to implement erosion and sediment measures to control mercury or to prohibit these activities all together (Option 2), and adopt Statewide Mine Prioritization Strategy (Option 3) to identify and prioritize legacy/abandoned mine sites and mining waste for cleanup.			
Response: Per CSERC1-25, regarding mine prioritization, as described in Sections 6.9.3 of the Staff Report, the principal disadvantage of a Mine Prioritization Strategy, or Option 3, is a lack of funding for both state and local agencies. Adopting such a strategy statewide in addition to the recommended option adds demands in addition to what is required to monitor and enforce implement erosion and sediment control to control mercury. Therefore, the Staff Report recommends Option 2 at this time. Please also see CSERC1-7 above regarding mine prioritization and disturbing soils.			
Letter: CSERC1, Pg8, P3	COMMENT	Excerpt: 43	Type: non-point source
[Briefly we suggest that there be:]			
8) Use of language under Issue J that says dischargers in high mercury areas will be required to implement sediment and erosion control measures, that there will be downstream monitoring by the regulatory agency to determine if the dischargers are in compliance, and if control measures do not control increased re-suspension and methylation then the discharger must cease operations (this would include suction dredgers)			
Response: Monitoring requirements in the Provisions and existing permitting systems are expected to adequately monitor mercury			

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concentrations. Staff do not recommend adding requirements that dischargers cease operations in cases where dischargers are found to be out of compliance.

RVIT1**Author:** Paula Britton **Title:** Tribal Administrator **Organization(s):** Round Valley Indian Tribes**Address:** 77825 Covela Road, Covelo, California 95428 **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: RVIT1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
On behalf of the California Indian Environmental Alliance and Round Valley Indian Tribes, we thank you for this opportunity to comment on the SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives . For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.			
Response: Comment noted.			
Letter: RVIT1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Support
<p>We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.</p> <p>It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.</p> <p>The legacy of Mercury in California land and waters a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their inherent responsibility to protect the environment that that sustains their Peoples and all living things. When addressing the toxicity that persists from this era it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Pro visions</p>			

Response: Thank you for your support. Comment noted.			
Letter: RVIT1 , Pg2, P2	NOT COMMENT	Excerpt: 3	Type: Summary
In order to assist in the success of this Plan and efforts that will stem from it we respectfully submit the following comments and recommendations to the proposed <u>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 Mercury Provisions.</u> including the Staff Report the SEO and the Provisions within, referred to as the Plan throughout this document:			
Response: Comment noted.			
Letter: RVIT1 , Pg2, P3	COMMENT	Excerpt: 4	Type: Summary
Continued inclusion of CUL, T-SUB and SUB			
As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code§ 13241, subs. . (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.			
Response: Comment noted.			
Letter: RVIT1 , Pg2, P4	COMMENT	Excerpt: 5	Type: Summary
Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice culture and to eat traditional foods it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete.			
Response: Comment noted.			
Letter: RVIT1 , Pg2, P5	COMMENT	Excerpt: 6	Type: Support
The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial use definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.			
Response: Comment noted.			
Letter: RVIT1 , Pg2, P6	COMMENT	Excerpt: 7	Type: Summary
Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely "tribal traditional and cultural uses" and "tribal subsistence fishing" in order that they could be applied statewide. Definition development began with the language first adopted by Region 1 and for four years we worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Provisions which unfortunately changed these definitions as follows:			
Response: Comment noted.			

Letter: RVIT1 , Pg3, P1	COMMENT	Excerpt: 8	Type: Beneficial Uses
<p>In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm that cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase "as affirmed by California Native American Tribe(s)," was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.</p>			
<p>Response: Please see Response to Comment CIEAEtA11-3.</p>			
Letter: RVIT1 , Pg3, P2	COMMENT	Excerpt: 9	Type: Beneficial Uses
<p>In the Pro visions staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of "minimal," which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word "fundamental" purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.</p>			
<p>Response: Please see Response to Comment CIEAEtA11-3.</p>			
Letter: RVIT1 , Pg3, P3	COMMENT	Excerpt: 10	Type: Beneficial Uses
<p>Recommendations:</p> <ul style="list-style-type: none"> Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses 			
<p>Response: Please see Response to Comment CIEAEtA11-3.</p>			
Letter: RVIT1 , Pg3, P3	COMMENT	Excerpt: 11	Type: Beneficial Uses
<ul style="list-style-type: none"> That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture {CUL}, Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily. 			
<p>Response: Please see Response to Comment CIEAEtA11-3.</p>			
Letter: RVIT1 , Pg3, P3	COMMENT	Excerpt: 12	Type: Beneficial Uses
<ul style="list-style-type: none"> We recommend the following revisions to these definitions in order to return them to their original meaning and intent: <p>Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]</p> <p>Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic</p>			

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resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal [fundamental] needs for sustenance.			
Response: Please see Response to Comment CIEAETa1-3.			
Letter: RVIT1 , Pg3, P4 to Pg4, P1	COMMENT	Excerpt: 13	Type: ???
Bioavailability of Mercury			
We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bioaccumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8. Reccomendation:			
<ul style="list-style-type: none"> That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations. 			
Response: Please see Response to Comment CIEAETa1-4.			
Letter: RVIT1 , Pg4, P2	COMMENT	Excerpt: 14	Type: Beneficial Uses
Current and Future Use of the Beneficial Use Provisions:			
Page xvii of the Executive Summary states that "the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established." This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by t his Plan and applicability of the Provisions to currently established TMDLs by use of the word "is."			
Response: Please see Response to Comment CIEAETa1-5.			
Letter: RVIT1 , Pg4, P3	COMMENT	Excerpt: 15	Type: Beneficial Uses
Page xviii states that associated mercury WQOs related to subsistence beneficial uses (T SUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.			
Response: Please see Response to Comment CIEAETa1-5.			
Letter: RVIT1 , Pg4, P4	COMMENT	Excerpt: 16	Type: TMDLs
Recommendations:			
<ul style="list-style-type: none"> That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments. 			
Response: Please see Response to Comment CIEAETa1-5.			
Letter: RVIT1 , Pg4, P4	COMMENT	Excerpt: 17	Type: ???
<ul style="list-style-type: none"> That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that so that as new information and 			

technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates.

Response: Please see Response to Comment CIEAETAI1-5.

Letter: RVIT1 , Pg4, P4	COMMENT	Excerpt: 18	Type: Beneficial Uses
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- We recommend that this forward thinking sentiment also be extended explicitly in the Plan to the continued application of Tribal Cultural beneficial use.

Response: Please see Response to Comment CIEAETAI1-5.

Letter: RVIT1 , Pg4, P5 to Pg5, P1-2	COMMENT	Excerpt: 19	Type: T-SUB Objective
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Strengthening of the T-SUB Water Quality Objectives

This staff report contains the recommendation that the statewide fish t issue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is " the same as the U.S. EPA nationally recommended subsistence rate."

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.

Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.

Response: Please see Response to Comment CIEAETAI1-6.

Letter: RVIT1 , Pg5, P3	COMMENT	Excerpt: 20	Type: ???
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We do recognize that Porter-Cologne Water Quality Control Act (Wat . Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California's beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 8 5417, November 28, 2016}and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that

span West Coast states bordering our shared Pacific Ocean and river systems.			
Response: Please see Response to Comment CIEAETa11-6.			
Letter: RVIT1 , Pg5, P4-5	COMMENT	Excerpt: 21	Type: Tribal Beneficial Use
<p>The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported “ CA Tribal Fish Consumption Study” (SWRCB- UC Davis, 2016}, which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% TL3/30% TL4 mixture, and that all Tribes do not consume the same fish species.</p> <p>Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available . When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.</p>			
Response: Please see Response to Comment CIEAETa11-6.			
Letter: RVIT1 , Pg6, P1	COMMENT	Excerpt: 22	Type: Consumption Rate
<p>We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides and overview of CA Tribal fish consumption patterns it is not exhaustive and it can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.</p>			
Response: Please see Response to Comment CIEAETa11-6.			
Letter: RVIT1 , Pg6, P2	COMMENT	Excerpt: 23	Type: ???
<p>We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.</p>			
Response: Please see Response to Comment CIEAETa11-6.			
Letter: RVIT1 , Pg6, P3	COMMENT	Excerpt: 24	Type: EPA Automatic Extension
<p>Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows</p> <ul style="list-style-type: none"> • That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) <u>based on a fish consumption rate of 175 grams per day, allowing safe consumption of fish at 5-6 meals per week,</u> • That the Plan affirm that this WQO is a minimum statewide standard , • That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that 			

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<p>Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level</p> <ul style="list-style-type: none"> • That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat, and • That the Plan include language regarding the applicable state and federal anti degradation or anti-backsliding provisions • It would also be helpful to see the associated fish consumption rates added to Table i, Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals per week. 			
Response: Please see Response to Comment CIEAETaI1-6.			
Letter: RVIT1 , Pg6, P4	COMMENT	Excerpt: 25	Type: Water Quality Objectives
<p>CUL Water Quality Objective Considerations</p> <p>We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.</p>			
Response: Please see Response to Comment CIEAETaI1-7.			
Letter: RVIT1 , Pg7, P1	COMMENT	Excerpt: 26	Type: ???
<p>Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.</p>			
Response: Please see Response to Comment CIEAETaI1-7.			
Letter: RVIT1 , Pg7, P2	COMMENT	Excerpt: 27	Type: ???
<p>Recommendation: 6.6 Issue F. - Yes, Option 3/amended as follows</p> <ul style="list-style-type: none"> • We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses. • That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses. 			
Response: Please see Response to Comment CIEAETaI1-7.			
Letter: RVIT1 , Pg7, P3-4	COMMENT	Excerpt: 28	Type: Relative Source Contribution

Revisit the RFC

The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001}.

The calculation for the Mercury WQOs to protect human health describes the RSC as follows: RSC= relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day.

Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?

Recommendation:

- That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation.

Response: Please see Response to Comment CIEAEtA1-8.

Letter: RVIT1 , Pg7, P5	COMMENT	Excerpt: 29	Type: Beneficial Uses
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Evidence in Designating Beneficial Uses

On Pg. 111 the Plan text states that *"The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses."* The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils.

Response: Please see Response to Comment CIEAEtA1-9.

Letter: RVIT1 , Pg8, P1	COMMENT	Excerpt: 30	Type: ???
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We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: *"However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition."* There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally

important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People .			
Response: Please see Response to Comment CIEAETAI1-9.			
Letter: RVIT1 , Pg8, P2	COMMENT	Excerpt: 31	Type: ???
Recommendation:			
<ul style="list-style-type: none"> That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level. 			
Response: Please see Response to Comment CIEAETAI1-9.			
Letter: RVIT1 , Pg8, P2	COMMENT	Excerpt: 32	Type: Tribal Consultation
[Recommendation]			
<ul style="list-style-type: none"> That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use. 			
Response: Please see Response to Comment CIEAETAI1-9.			
Letter: RVIT1 , Pg8, P3-4	COMMENT	Excerpt: 33	Type: Trophic Level 4 Fish
Expand Examples of Trophic Level 4 Fish			
<p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p>			
Recommendation:			
<ul style="list-style-type: none"> Include sturgeon in the definition section of the Plan text as follows: <p style="padding-left: 40px;">TROPIC LEVEL 4 FISH (TL4): Fish that consume TROPIC LEVEL 3 fish and other aquatic organisms. [Examples of these species include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C.</p>			
Response: Please see Response to Comment CIEAETAI1-10.			
Letter: RVIT1 , Pg8, P5 to Pg10, P2	COMMENT	Excerpt: 34	Type: Tribal Consultation

Include information regarding Tribal Consultation

We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that:

"Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))"

This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order 810-11.

Recommendation:

- That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, "Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes." Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self

government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/ or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52

Response: Please see Response to Comment CIEAETAI1-11.

Letter: RVIT1 , Pg10, P3	COMMENT	Excerpt: 35	Type: Tribal Consultation
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We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those policies. One example is the policy developed by the Karuk Tribe.

Response: Please see Response to Comment CIEAETAI1-11.

Letter: RVIT1 , Pg10, P4	COMMENT	Excerpt: 36	Type: Recommended Language
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in "Loleta (Eureka)." This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor.

Response: Please see Response to Comment CIEAETAI1-12.

Letter: RVIT1 , Pg10, P5	COMMENT	Excerpt: 37	Type: Beneficial Uses
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Statement of Necessity for Beneficial Uses

In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain

"to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals." (Resolve Clause No. 1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COM M, RECI, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:

these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order "to create a consistent set of beneficial uses to be used" (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan.

Response: Please see Response to Comment CIEAET1-13.

Letter: RVIT1 , Pg11, P2-4	COMMENT	Excerpt: 38	Type: Fish Consumption
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Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

- Amend this paragraph to include the following bracketed Plan text:

At the same time , these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus at risk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose , [the habitat that supports the fish fishery] and the cost of different fish choices.

Response: Please see Response to Comment CIEAetAI1-14.

Letter: RVIT1 , Pg12, P1	COMMENT	Excerpt: 39	Type: Greet/Ending
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Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Comment noted.

SRRD1**Author:** David Watkinson **Title:** President **Organization(s):** Sierrans for Responsible Resource Development**Address:** P.O. Box 404, Grass Valley, CA 95945 **Interest Group:** Environmental**Date:** 2/17/2017**Contact person:** David Watkinson **Phone:** (530)271-0679 ext 101 **E-mail:** dwatkinson@sierrans.org

Letter: SRRD1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Summary
The Sierrans for Responsible Resource Development is a non-profit tax exempt 501(c)(4) organization that is a voice for the resource industries in the Sierra Nevada Mountains, including dredge mining.			
Response: Comment.			
Letter: SRRD1 , Pg1, P1	???	Excerpt: 2	Type: Suction Dredge Mining
We recognize the importance of protection California’s waters. We also recognize the importance of strong, economically viable, responsible, and sustainable resource industries. It is our position that dredge mining, which is currently under a moratorium by the State, is the Best Available Technology to remove mercury from our waterways and improve (remediate) them.			
Response: Dredge mining is not addressed by the Provisions and takes no action on that practice. In addition, there is no convincing evidence presented in this letter showing that suction dredge mining significantly reduces the amount of methylmercury in fish, the control of which is the goal of the Provisions.			
Letter: SRRD1 , Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Summary
We would like to provide the following comments on beneficial uses and mercury objectives:			
Response: Comment noted.			
Letter: SRRD1 , Pg1, P3	COMMENT	Excerpt: 4	Type: Suction Dredge Mining
Environmental Baseline and CEQA Documents			
Appendix F relates to abandoned mines and suction dredge mining. An unbiased review of the CEQA documents related to suction dredge mining from 2012 shows they are extremely flawed and likely to be overturned by the Courts. The science used was politically motivated and the scientific data “selected” and “selectively interpreted” to reach negative conclusions about dredge mining. The environmental baseline of			

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<p>existing mercury in California’s river systems and waterways was not adequately analyzed. USGS and other work clearly shows mercury exists in the river systems and it is being transported continuously downstream with natural erosion. In addition, storm events and spring run-off move tremendous amounts of material downstream – including mercury. Turbidity and movement of mercury and metals is an ongoing process and small suction dredges create insignificant impacts compared to what is happening annually through natural causes in California’s waterways.</p>			
<p>Response: Commenter offers no supporting arguments to support claim as to why the CEQA documents related to suction dredge mining are extremely flawed. In addition, Commenter appears confused in that this rulemaking does not establish any regulation whatsoever for the control of suction dredge mining. It is true that suction dredge mining is discussed in the Staff Report, in Appendix F, but the discussion is limited to background of the issue, as regulations regarding suction dredge mining are not included in the scope of this project. Commenter should direct issues to the future Potential Actions to Protect Water Quality from Suction Dredge Mining project, which is a separate rulemaking.</p>			
Letter: SRRD1 , Pg2, P1	COMMENT	Excerpt: 5	Type: Suction Dredge Mining
<p>Dredge mining in California’s river systems is arguably the Best Available Technology to remove mercury from our waterways and the CEQA documents did not analyze the positive aspects of dredge mining – which can remove in excess of 95% of the mercury from dredged material as it is processed (including other metals). The mercury can then be properly disposed of and future mobilization of mercury from natural erosion, storm events, and spring run-off can be eliminated. Cumulative impacts from mercury constantly moving downstream can be reduced or eliminated.</p>			
<p>Response: Please see Response to Comment SRRD1-4 above. In addition, Appendix F of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) presents a discussion of the concerns regarding suction dredge mining in California, and section 6.9 of the Staff Report presents a detailed discussion of the issue of how to address residual mercury from mine waste (including legacy mines).</p>			
Letter: SRRD1 , Pg2, P2	COMMENT	Excerpt: 6	Type: CEQA/SED
<p>Note that the CEQA document did not adequately analyze the cumulative impacts of natural erosion from water flow, storm events, and spring run-off that occur either continuously, seasonally, or with specific precipitation events. Water flow is also seasonably controlled by Water Districts. This mercury is being mobilized and remobilized and is moving downstream into reservoirs or the Delta where it settles out.</p>			
<p>Response: The objectives of the Provisions, as described in section 2.2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) is to recognize beneficial uses, adopt appropriate water quality objectives, and control further discharges of mercury to California waters in a consistent manner. While the effect of natural events may act to “remobilize mercury”, and while the provisions do include suggested compliance methods such as adherence to Best Management Practices for erosion control (see section 7.2.1 of the Staff Report), the control of such natural events themselves, whether related to flow management by water districts or not, is not a project objective.</p>			
Letter: SRRD1 , Pg2, P3	COMMENT	Excerpt: 7	Type: CEQA/SED
<p>Studies clearly show that methylation of mercury is a chemical reaction that requires low oxygen water and high temperatures. Hence, removal of mercury using dredge mining in the upstream rivers and streams before the mercury can move downstream to reservoirs and the Delta is the best and safest way to remove mercury from our river systems to keep it from potentially mobilizing downstream. Data from the USGS and other sources clearly shows this, if it is presented and interpreted in an unbiased manner.</p>			
<p>Response: Chapter 2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) includes a complete</p>			

project description, including a description of the project objectives (section 2.2). The objectives of the project (and provisions) include:

1. Recognize beneficial uses of water made by California Native Americans and subsistence fishers, including fishing, cultural, and ceremonial uses of water;
2. Adopt numeric water quality objectives for mercury to protect piscivorous wildlife from consumption of fish with elevated levels of mercury;
3. Adopt water quality objective(s) for mercury to protect recreational fishers, subsistence fishers, and California tribes from consumption of fish with elevated levels of mercury;
4. Provide a program of implementation to control mercury discharges and achieve the Mercury Water Quality Objectives in California waters; and
5. Provide statewide consistency for objectives 1 through 4.

In general, the objectives are to recognize beneficial uses, adopt appropriate water quality objectives, and control further discharges of mercury to California waters in a consistent manner. The extent and potential removal of residual mercury is discussed in Chapter 4, 6, and 10 of the Staff Report, is not within the scope of this project currently under consideration, and does not fulfill the goals of this project. In addition, Appendix F of the Staff report discusses the concerns regarding suction dredge mining.

Letter: SRRD1 , Pg2, P4	COMMENT	Excerpt: 8	Type: CEQA/SED
<p>It is clear that removal of mercury as high up in the river systems as possible is desirable. Removal will prevent potential for downstream remobilization and methylation. Keeping the mercury out of low oxygen and higher temperature waters will reduce bioaccumulation in fish, amphibians, and invertebrates, improve downstream drinking water, and prevent potential impacts to humans. Dredging removes mercury using gravity separation, without use of any additional chemicals. Mercury is not used (added to the system) by miners, it is only removed from the system.</p>			
<p>Response: Chapter 2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) includes a complete project description, including a description of the project objectives (section 2.2). In general, the objectives are to recognize beneficial uses, adopt appropriate water quality objectives, and control further discharges of mercury to California waters in a consistent manner. Remediation programs that may involve “the removal of mercury as high up in the river systems as possible” is not within the scope of the project (and provisions) currently under consideration, and does not fulfill the goals of the current project. A detailed discussion of the issue of how to address mercury from mine waste (including legacy mines) is presented in section 6.9 of the Staff Report. Also, Appendix F of the Staff Report</p>			

discusses the concerns regarding suction dredge mining.			
Letter: SRRD1 , Pg2, P5	COMMENT	Excerpt: 9	Type: CEQA/SED
<u>Mercury Collection, Documentation of Collection, and Disposal by Dredge Miners</u>			
<p>The State should create a system that rewards the collection, tracking, and proper disposal of mercury from our river systems. Dredge miners should be educated in the handling and proper disposal of mercury. A system should be created where mercury is collected by dredge miners, the amount of the mercury collected documented, the location of where the mercury was collected identified (e.g. GPS coordinates), the location and amount of mercury disposed of documents, and miners paid a small amount for the amount of mercury collected and properly disposed of. This would incentivize the removal of mercury from our river systems and incentivize its proper disposal. It would also allow the agency to know where mercury was being collected and potentially identify “hot spots”. The Sierrans offer to work with the State to set up education programs, collection programs, and help develop and implement such a system.</p>			
Response: Please see Responses to Comments SRRD1-7 and 8.			
Letter: SRRD1 , Pg2, P5 (on Page 3)	COMMENT	Excerpt: 10	Type: Suction Dredge Mining
<p>We would suggest that removal of existing mercury from our waterways would achieve more environmental benefit than lowering discharge limits for existing or future industry.</p>			
Response: Please see Responses to Comments SRRD1-7 and 8.			
Letter: SRRD1 , Pg3, P1-2	COMMENT	Excerpt: 11	Type: Legacy Pollution
<u>Mining and Mercury</u>			
<p>Much of the mercury in California’s waterways did come from historic mining. Hydraulic mining, used from about 1860 to 1884 moved tremendous amounts of material and had a relatively high rate of mercury losses. There were also mercury mines that operated in California that provided mercury to the mining industry for gold recovery, use in explosives, etc. These sources of mercury are historic although releases of mercury do occur from a limited number of historic mine sites in the State.</p>			
<p>Mercury occurs from natural sources (rocks, plants, volcanoes, etc.). It was also used historically in agriculture, catalysts, dental procedures, electrical equipment, laboratories, industrial and control instrumentation, paints, paper and pulp manufacturing, pharmaceuticals, and other sources. In California, mining is not a major source of mercury – the Toxic Release Inventory shows the main sources to mercury to be release to air from cement plants and refineries.</p>			
Response: Comment noted. Chapter 7 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) contains a description of the reasonably foreseeable compliance methods for various categories of dischargers, including mines (section 7.2.1).			
Letter: SRRD1 , Pg3, P3	COMMENT	Excerpt: 12	Type: Summary
<p>Mercury is not used in modern mining in the U.S. and certainly is not used in dredge mining. The reality is that modern dredge mining and Responses to Comments—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 Mercury Provisions.</p>			

potentially other mining technology such as the Falcon Concentrator being tested by the Nevada Irrigation District at Combie Lake Reservoir are the actual answer to removing mercury from our river systems.			
Response: Comment noted. Please see Response to Comment SRRD1-7.			
Letter: SRRD1 , Pg3, P4	COMMENT	Excerpt: 13	Type: Don't Regulate Mines More
Mercury can be released from modern mining through water discharges that may contain trace metals or in air when rock containing mercury is crushed or disposed of in landfills. The mining industry is highly regulated in its discharges through NPDES permits, storm water permits, and air emissions permits from various State agencies. Additional regulation of the mining industry is not required and is already in place through existing permitting processes (including CEQA for new mines).			
Response: Comment noted. The introduction (Chapter 1) to the State Water Board's Staff Report and Substitute Environmental Document (Staff Report) describes the regulatory basis for the Provisions (Section 1.1) as well as the legal basis (Section 1.2). Reasonably foreseeable methods of compliance for mine operations are described in section 7.2.1 of the Staff Report. CEQA analysis of new mines (and other operations) will not necessarily achieve the objectives outlined in section 2.2 of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report) unless the proposed provisions (including beneficial use designations and water quality standards) are put into place.			
Letter: SRRD1 , Pg3, P5	COMMENT	Excerpt: 14	Type: Mercury Source
Note that natural erosion, storm events, and spring run-off remobilize mercury (and other sediments) at some times on a massive scale. Permitted discharges from existing or new mines are insignificant compared to what may be occurring naturally.			
Response: Comment noted. In general, the objectives of the provisions described in section 2.2 of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report) are to recognize beneficial uses, adopt appropriate water quality objectives, and control further discharges of mercury to California waters in a consistent manner. While the effect of natural events may act to "remobilize mercury", and while the provisions do include suggested compliance methods such as adherence to Best Management Practices for erosion control (see section 7.2.1 of the Staff Report), the control of such natural events themselves is not a project objective.			
Letter: SRRD1 , Pg4, P1	COMMENT	Excerpt: 15	Type: Mercury Removal
The State should not set discharge limits that would effectively prevent industrial operations (including mines) from discharging, killing jobs, and arguably not achieving any environmental benefits. The State should, arguably, focusing on how it can remove existing mercury from our waterways and eliminate the historic mercury from the system, which would have a far more positive environmental impact. Removal of historic mercury is the best way to enhance and protect beneficial uses.			
Response: The State is not preventing mines or any other industrial dischargers from discharging in compliance with the necessary permits. Chapter 7 of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report) contains a description of the reasonably foreseeable methods for various categories of dischargers, including mines (section 7.2.1). A detailed discussion of the issue of how to address residual mercury from mine waste (including removal of historic mercury resulting from legacy mine operations) is presented in section 6.9 of the Staff Report. Also, please see response for SRRD1-7.			

Letter: SRRD1 , Pg4, P2	COMMENT	Excerpt: 16	Type: CEQA/SED
Real Science			
There is a need to collect data to determine a baseline for mercury levels in California’s water system and also understand how natural erosion, storm events, and spring run-off are mobilizing sediment and mercury. There is a need to understand the real impacts of a dredge in comparison to the baseline. Do we leave the mercury to move downstream continuously by banning dredge mining?			
Response: Please see Response to Comment SRRD1-6, above.			
Letter: SRRD1 , Pg4, P3	COMMENT	Excerpt: 17	Type: CEQA/SED
Note that as climate change occurs, the water temperature in our reservoirs and in the Delta will increase and methylation of mercury will also increase – affecting flora and fauna. We need to remove mercury now – as soon as possible. Removing the mercury now will positively impact fish, amphibians, and invertebrates in the future. Arguably, the State has not addressed what global warming effects may have on mercury in California’s waterway in CEQA analysis to date and it should be addressed.			
Response: The objectives of the provisions, as described in section 2.2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) are to recognize beneficial uses, adopt appropriate water quality objectives, and control further discharges of mercury to California waters in a consistent manner. While the effect of climate change and other natural events may under select circumstances act to increase methylation of mercury, and the potential complications caused by climate change and other natural events are considered in sections 4.4.10, 8.4.7, and Chapter 10 of the Staff Report, the control of climate change and natural events themselves is not a project objective.			
Also, a detailed discussion of the removal of residual mercury resulting from legacy mines and other sources is presented in section 6.9 and Chapter 10 of the Staff Report.			
Letter: SRRD1 , Pg4, P4	COMMENT	Excerpt: 18	Type: CEQA/SED
We need to collect real scientific data and not make assumptions—the current CEQA analysis appears to be based greatly on opinion and supposition as opposed to peer reviewed scientific data.			
Response: The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) includes an environmental analysis of the reasonably foreseeable methods of compliance with the Provisions. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4); Pub. Resources Code, § 21159, subd. (a)). In developing the environmental analysis, the State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance, but the environmental analysis shall account for a reasonable range of environmental, economic, and technical factors. (Cal. Code Regs., tit. 23, § 3777, subd. (c); Pub. Resources Code, § 21159, subd. (d)).			
In addition, Appendix S of the Staff Report contains the results of the State Water Board’s external scientific peer review.			
Letter: SRRD1 , Pg4, P4	???	Excerpt: 19	Type: Summary
The Sierrans is interested in working with the State to collect this data going forward, including monitoring the and understanding the real impacts of dredge mining as opposed to guessing what they are.			

Responses to Comments—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 Mercury Provisions.

Response:			
Letter: SRRD1 , Pg4, P5	COMMENT	Excerpt: 20	Type: Mercury Removal
The removal of mercury using dredge mining and other modern mining techniques will reduce mercury levels in fish over time, not increase it.			
Response:			
Letter: SRRD1 , Pg4, P6	NOT COMMENT	Excerpt: 21	Type: Greet/Ending
Please contact me at (530) 271-0679 Ext 101 or dwatkinson@sierrans.org should you require any clarification of our comments.			
Response:			

COceanside1**Author:** Lori Rigby **Title:** Honorable Chair Marcus **Organization(s):** City of Oceanside Water Utilities Department**Address:** 3950 North River Road, Oceanside CA, 92058 **Interest Group:** POTW**Date:** 2/17/2017**Contact person:** Lori Rigby **Phone:** 7604355912 **E-mail:** lrigby@ci.oceanside.ca.us

Letter: COceanside1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
This letter is in response to the notice of public comment titled “Proposed 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 Mercury Provisions (referred to as the Provisions) and the Draft Staff Report, including the Draft Substitute Environmental Documentation (Draft SED).”			
Response: Comment noted.			
Letter: COceanside1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
The City of Oceanside (City) would first like to request an extension to continue the review the extensive staff report release in January of this year. The City understands development of these Provisions has occurred over a number of years, but the results of this development have only been accessible for a limited period of time as a complete document.			
Response: Please see Responses to Comments to WSPA2-2 and 18.			
Letter: COceanside1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Implementation
The regulatory framework for implementation of these provisions has not been clearly defined.			
Response: The regulatory framework is explicitly defined in the Provisions.			
Letter: COceanside1 , Pg1, P3	COMMENT	Excerpt: 4	Type: No Path for Compliance
The staff report identifies that mercury deposits from historic gold and mercury mining are environmentally persistent and may not meet Water Quality Objectives (WQOs) for a century (pg 266). Expectations for achieving WQOs must be clearly identified as well as a realistic			

Responses to Comments—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 Mercury Provisions.

timeline.			
Response: Mercury deposits from historic mining are only persistent in some water bodies. Please see Response to Comments ACWA1-58 and 262. Regarding timelines, please see Response to Comment ACWA1-267.			
Letter: COceanside1, Pg1, P3	COMMENT	Excerpt: 5	Type: Economics
Detailed information needs to be provided of what treatment technologies are available to meet these stringent requirements and if this is fiscally possible to achieve such objectives by the dischargers.			
Response: Discussion of the technologies required to achieve the requirements as well as costs are provided in the Economic Analysis in Appendix R of the Staff Report.			
Letter: COceanside1, Pg1, P3	COMMENT	Excerpt: 6	Type: No Guidance
Additionally, little guidance is provided on the mechanism for the Regional Boards to amend NPDES permits to incorporate the proposed WQOs.			
Response: Please see Responses to Comments WSPA2-8 and 18.			
Letter: COceanside1, Pg1, P4	NOT COMMENT	Excerpt: 7	Type: Summary
A suggested mercury source removal for removing mercury discharges in Section 7.1.2 is upgrading secondary wastewater treatment plant to tertiary treatment plants to address mercury disposed of in industrial discharges, household discharges or dental offices to municipal collection systems.			
Response: Comment noted.			
Letter: COceanside1, Pg1, P4	COMMENT	Excerpt: 8	Type: Economics
Requiring this could cost tens of millions of dollars in construction alone which does not include the drastic increase to Operation and Maintenance (O&M) costs.			
Response: Regarding economic considerations please see Responses to Comments WSPA2-9 and 26 as well as ACWA1-114. Also please note the City of Oceanside's San Luis Rey Water Reclamation Facility and its La Salina Wastewater Treatment Plant discharge to the Pacific Ocean. The Provisions, which amends the Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) will not apply to these waste water treatment plants.			
Letter: COceanside1, Pg1, P4	COMMENT	Excerpt: 9	Type: Economics
It should be noted that budgets are fixed and rates cannot be exponentially increased to accommodate building a new wastewater facility to meet a single effluent limitation.			

Response: Please see Responses to Comments ACWA1-22 and 37.			
Letter: COceanside1 , Pg2, P4	COMMENT	Excerpt: 10	Type: Economics
It would be a significant burden to municipalities and rate payers to meet this requirement.			
Response: Please see WSPA2-6 for an economic analysis and ACWA1-22 and 37 regarding burdens to ratepayers.			
Letter: COceanside1 , Pg2, P4	COMMENT	Excerpt: 11	Type: Sources
Requirements should be focused on controlling industrial and household discharges through industrial pretreatment permits and public outreach.			
Response: The Provisions specifically require MS4 permittees to adopt at a minimum four measures, including public outreach, to control mercury sources. Regarding industrial pretreatment permits,			
Letter: COceanside1 , Pg2, P4	COMMENT	Excerpt: 12	Type: Economics
Upgrading wastewater facilities to tertiary treatment for unregulated mercury discharges is not practical or attainable for all districts.			
Response: Please see Response to Comment WSPA2-24.			
Letter: COceanside1 , Pg2, P1	COMMENT	Excerpt: 13	Type: No Path for Compliance
Short of a plant expansion to tertiary treatment, the City did not see sufficient information provided on specific treatment techniques.			
Response: Given that the City of Oceanside’s wastewater treatment plants (i.e., the San Luis Rey Water Recycling Facility and the La Salina Wastewater Treatment Plant) both discharge to the Pacific Ocean, the City is not affected by the Provisions and there are no upgrades expected for such plants.			
Letter: COceanside1 , Pg2, P1	COMMENT	Excerpt: 14	Type: Economics
On page 176 of the staff report does mention current technologies can be used to meet effluent limitations, but does not specify what this entails or what the fiscal impact could be.			
Response: The Provisions include a water column level of 12 ng/L for flowing waters and a 4 ng/L for slow moving waters. Since approximately ninety-three percent of discharges are to flowing waterbodies (See Table N-3a in Appendix N of the Staff Report), the majority of dischargers will need to meet the 12 ng/L as an effluent limit. Table N-6 in Appendix N shows that ninety three percent of dischargers were meeting an effluent limit of 12 ng/L from 2009 through 2015 and Table N-7 of Appendix N shows that seventy three percent of all dischargers were meeting an effluent limit of 4 ng/L from 2009 through 2015. Therefore, the vast majority of facilities will not need to upgrade to meet the effluent limits contained in the Provisions and the effluent limits in the Provisions are achievable with current technologies. However, to allow an alternative methods of implementation, the Provisions have been amended to allow a load based assessment and implementation. However, this will			

require implementation on a watershed scale rather than on a permit-by-permit basis. Regarding economic analysis please see Appendix R. However, the City of Oceanside discharges to the Pacific Ocean and is not expected to be affected by the Provisions, which do not apply to Ocean discharges.			
Letter: COceanside1 , Pg2, P1	COMMENT	Excerpt: 15	Type: No Path for Compliance
The anticipated compliance schedules for implementing plant upgrades is not clear from the staff report.			
Response: Please see Response to Comment ACWA1-87.			
Letter: COceanside1 , Pg2, P2	NOT COMMENT	Excerpt: 16	Type: Description of Reg
In Section 7.2.8 of the staff report effluent water column limitations are cited as 4 ng/L; currently, wastewater EPA Method 245.1 can only detect down to 33 ng/L.			
Response: Please see Response to Comment ACWA1-111.			
Letter: COceanside1 , Pg2, P2	COMMENT	Excerpt: 17	Type: No Path for Compliance
ELAP certified laboratories may be unable to detect mercury to that level due to limitations of current technologies.			
Response: Please see Response to ACWA1-111 regarding labs and costs that can detect Hg at such levels.			
Letter: COceanside1 , Pg2, P2	COMMENT	Excerpt: 18	Type: No Path for Compliance
It is not a reasonable expectation to enforce effluent limits that cannot be seen with this method.			
Response: Please see Response to Comments ACWA1-110 and 111 regarding labs that can detect Hg in compliance with new regulation, and the variety of other options.			
Letter: COceanside1 , Pg2, P3	NOT COMMENT	Excerpt: 19	Type: Choose an item.
EPA Method 245.7 can see elemental mercury down to 1.8 ng/L with an ML of 5 ng/L, but this is under ideal conditions; any interference will impact the ML.			
Response: Comment noted. Please see Response to Comments ACWA1-110 and 111 regarding labs that can detect Hg in compliance with new regulation, and the variety of other options.			
Letter: COceanside1 , Pg2, P3	COMMENT	Excerpt: 20	Type: No Path for Compliance
The City suggests that the Board work with dischargers to understand treatment techniques and available laboratory methods to be sure that effluent limitations can be reach and detected with the technology available. Proposing a limit of 4 ng/L is not in line with available laboratory methods.			

Responses to Comments—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 Mercury Provisions.

Response: Please see Response Comment ACWA1-168 regarding feasibility issues. In addition, please again note that the City of Oceanside’s discharges to the Pacific Ocean will not be required to reach a 4 ng/L level of mercury in effluent, as they are not subject to these Provisions			
Letter: COceanside1, Pg2, P4	NOT COMMENT	Excerpt: 21	Type: Summary
Under the previous San Diego stormwater (MS4) permit, mercury was not required to be measured in either receiving water monitoring or MS4 outfall monitoring programs.			
Response: Comment noted.			
Letter: COceanside1, Pg2, P4	NOT COMMENT	Excerpt: 22	Type: Summary
Under the current San Diego MS4 Permit, mercury is only assessed in the receiving water monitoring program, and not in the MS4 outfall discharge monitoring.			
Response: Comment noted.			
Letter: COceanside1, Pg2, P4	NOT COMMENT	Excerpt: 23	Type: background/history
The San Luis Rey River had not been monitored since 2012 due to no flow. It was sampled for the first time this permit cycle during the January 20 rain events. Results are pending for mercury levels.			
Response: Comment noted.			
Letter: COceanside1, Pg2, P4	NOT COMMENT	Excerpt: 24	Type: background/history
For the Carlsbad watershed, Oceanside does not discharge to the single receiving water station the copermittees have used for compliance under the current MS4 Permit.			
Response: Comment noted.			
Letter: COceanside1, Pg2, P5	NOT COMMENT	Excerpt: 25	Type: background/history
The benchmark reference for mercury in receiving water set by the MS4 copermittees is currently set at 0.002 mg/L, set through the Basin Plan based on the “MUN” (municipal water supply) beneficial use.			
Response: Comment noted.			
Letter: COceanside1, Pg2, P5	COMMENT	Excerpt: 26	Type: No Path for Compliance
This will have to be revised if the Mercury Provisions are implemented into future MS4 permits.			
Response: Please see Response to Comment ACWA1-147.			

Letter: COceanside1 , Pg3, P1	COMMENT	Excerpt: 27	Type: Request: More Time
Once again, the City requests an extension for review and urges the Board not to approve the Provisions as written, and to continue to work with stakeholders to develop new, more reasonable program measures that are directed toward achieving measureable mercury reductions without substantial increases in cost to water and wastewater ratepayers.			
Response: Please see Response to Comment WSPA2-2.			
Letter: COceanside1 , Pg3, P2	NOT COMMENT	Excerpt: 28	Type: Greet/Ending
If you have any questions, please do not hesitate to contact me at (760) 435-5912 or by email at lrigby@ci.oceanside.ca.us .			
Response: Comment noted.			

FIGR1**Author:** Lorelle Ross **Title:** Re: Comment Letter -- Beneficial Uses and Mercury Objectives **Organization(s):** Federated Indians of Graton Rancheria**Address:** 6400 Redwood Drive, Suite 300 • Rohnert Park, CA 94928**Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** Buffy McQuillen**Phone:** (707) 566-2288**E-mail:** bmcguillen@gratonrancheria.com

Letter: FIGR1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
In a letter dated October 3, 2016, the Federated Indians of Graton Rancheria wrote to the State Water Resources Control Board to fully support the need for and inclusion of beneficial use definitions in the Draft Staff Report - 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 Mercury Provisions.			
Response: Comment noted.			
Letter: FIGR1, Pg1, P1	NOT COMMENT	Excerpt: 2	Type: General Support
As you are aware, the current definitions utilized by the State Water Resources Control Board (SWRCB) do not capture the unique needs of tribes and do not reflect our use of waters for traditional and cultural purposes, nor do they reflect the reliance of fishing for subsistence, which in turn reflects on the interconnected relationships between tribal families and regional tribes, but also reflects on our need to pass our knowledge, traditions and culture on to current and future generations.			
Response: Comment noted.			
Letter: FIGR1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Support
The proposed beneficial use definitions will allow us to continue our customs and traditions while simultaneously protecting the waters of our ancestors.			
Response: Comment noted.			
Letter: FIGR1, Pg1, P2	COMMENT	Excerpt: 4	Type: Support
We urge the SWRCB to maintain the tribal and subsistence fishing beneficial uses in the Plan as originally intended and not bifurcate or separate them for review at another time.			
Response: Thank you for your support and comment noted.			

Responses to Comments—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 Mercury Provisions.

Letter: FIGR1 , Pg1, P2	COMMENT	Excerpt: 5	Type: Support
We trust the SWRCB will encourage the Regional Water Quality Control Boards to work directly and in good faith with California tribes to honor this hard work and the definitions developed through the tribal consultation process.			
Response: Thank you for your support and encouragement.			
Letter: FIGR1 , Pg1, P3	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
Thank you for working with our Tribe and the tribes in California on this important tribal issue. If you would like to discuss this matter further please contact the Tribal Heritage Preservation Officer, Buffy McQuillen at (707) 566-2288 or by email at bmcguillen@gratonrancheria.com .			
Response: Comment noted.			

BIA1		
Author: Click here to enter text.	Title: Felicia Marcus, Chairman	Organization(s): US Department of the Interior Bureau of Indian Affairs
Address: 2800 Cottage Way Sacramento, California 95825	Interest Group:	Federal Government
Date: 2/17/2017		
Contact person: Douglas Garcia	Phone: (916) 978-6052	E-mail: Click here to enter text.

Letter: BIA1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
We would like to congratulate the State of California in implementing 2013 California Water Plan Update initiatives as it applies to developing an Amendment to the statewide Water Quality Control Plan for Inland Surface Waters.			
Response: Comment noted.			
Letter: BIA1, Pg1, P1	NOT COMMENT	Excerpt: 2	Type: General Support
California's Indian Tribes and individual Indians are well served by the California's Executive Order B-10-11, which seeks to facilitate communication and consultation with California Indian Tribes.			
Response: Comment noted.			
Letter: BIA1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: General Support
We applaud the State Water Resources Control Board for implementing Resolution 2016-0011, which provides for Tribal beneficial use.			
Response: Comment noted and thank you.			
Letter: BIA1, Pg1, P2	COMMENT	Excerpt: 4	Type: Tribal Outreach
Though this amendment is far from being complete, we encourage the State agencies and the Regional Boards to develop early and greater Tribal collaboration in adopting Tribal beneficial uses into their regional water control plans.			
Response: Section 2.6.6 of the Staff Report describes the State Water Board's notice to California Native American Tribes of the opportunity for early consultation, including the May 10, 2016 issuance of certified letters to 14 tribal communities, including all of the California tribes registered at the time to receive AB 52 (Gatto, 2014) notices.			
Letter: BIA1, Pg1, P3	NOT COMMENT	Excerpt: 5	Type: Greet/Ending
Should you have any further questions, please contact Douglas Garcia, Regional Water Rights Specialist at (916) 978-6052 or John Rydzik, Chief,			

Responses to Comments—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 Mercury Provisions.

Division of Environmental, Cultural Resources Management and Safety at (916) 978-6051.

Response: Comment noted.

SDCWA1**Author:** Toby Roy **Title:** Water Resources Manager **Organization(s):** San Diego County Water Authority**Address:** 4677 Overland Ave. San Diego, CA 92123 **Interest Group:** POTW**Date:** 2/17/2017**Contact person:** Lesley Dobalian **Phone:** (858) 522-6747 **E-mail:** [Click here to enter text.](#)

Letter: SDCWA1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
<p>Thank you for the opportunity to provide comments on the draft Staff Report (Staff Report) and Substitute Environmental Documentation (SED) for the proposed amendment to the State Water Resources Control Board’s (Board) Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries of California, Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Provisions). A significant amount of staff effort has gone into development of the Staff Report, which includes a wealth of scientific information on the problem of bioaccumulation of mercury in fish. A significant amount of staff effort has gone into development of the Staff Report, which includes a wealth of scientific information on the problem of bioaccumulation of mercury in fish. We acknowledge that this is an important public health issue that is complex, and presents substantial cross-jurisdictional challenges to developing a solution. This letter and the attached table include our comments.</p>			
Response: Comment noted.			
Letter: SDCWA1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: background/history
<p>The Water Authority is the wholesale water supplier in San Diego County, providing water to 3.2 million residents together with 24 member agencies through a mix of local and imported water supplies.</p>			
Response: Comment noted.			
Letter: SDCWA1, Pg1, P2	NOT COMMENT	Excerpt: 3	Type: background/history
<p>We are very interested in this subject because there are 24 surface water reservoirs in San Diego County, which were designed to support the region’s water supply needs by capturing storm water runoff and/or storing imported water.</p>			
Response: Comment noted.			

Letter: SDCWA1, Pg1, P2	NOT COMMENT	Excerpt: 4	Type: background/history
Many of the local reservoirs region were constructed in the late 1800s and early 1900s to provide water for the San Diego region and have reliably served the local agencies in the region since that time.			
Response: Comment noted.			
Letter: SDCWA1, Pg1, P2	NOT COMMENT	Excerpt: 5	Type: background/history
Recently the Water Authority expanded raw water storage capacity and improved local conveyance through our Emergency Storage Project. The local reservoirs are operated to maximize the use of local supply, offset dry-year shortfalls, and maintain emergency and carryover storage.			
Response: Comment noted.			
Letter: SDCWA1, Pg1, P2	NOT COMMENT	Excerpt: 6	Type: background/history
The Water Authority's member agencies manage most of the region's reservoirs, and in coordination with the member agencies, the Water Authority manages the imported conveyance system. We also coordinate reservoir operations with the city of San Diego to optimize the use of storage and manage a pumped storage project. The primary purpose of the region's reservoirs is to provide water supply infrastructure, including raw water conveyance and storage.			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P1	NOT COMMENT	Excerpt: 7	Type: background/history
In addition to providing water supply benefits, the region's reservoirs provide wildlife habitat, most agencies also support recreational fishing as a secondary use, though in many instances they are not required to do so. Fishing is managed by the member agencies in coordination with the California Department of Fish and Wildlife (DFW).			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P1	NOT COMMENT	Excerpt: 8	Type: background/history
In the interest of protecting public health, where fish tissue sampling has indicted mercury concentrations in excess of OEHHA's recommended levels, most reservoir operators in the San Diego region have proactively posted OEHHA's fish consumption advisories, which are also included in the State's Sport Fishing regulations booklets.			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P2	NOT COMMENT	Excerpt: 9	Type: Background/history
A number of these local reservoirs have been identified by the State Water Board for inclusion in the proposed Statewide mercury TMDL for drinking water reservoirs (Reservoir Policy) based upon data that requires additional validation and listing under 303(d) of the Clean Water Act (CWA) prior to the TMDL development.			
Response: Comment noted.			

Letter: SDCWA1, Pg2, P2	NOT COMMENT	Excerpt: 10	Type: Description of Reg
The Staff Report (Section 1.6) indicates that the Reservoir Policy is currently under development, but it has not been included as part of this proposed Water Quality Control Plan Update. Based on our review of your Staff Report, the primary source of mercury to the reservoirs in San Diego County is global atmospheric deposition.			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P2	COMMENT	Excerpt: 11	Type: Choose an item.
The Water Authority and our member agencies do not cause or contribute to mercury pollution in our local reservoirs and do not have a responsibility nor the ability to clean up this contamination.			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P2	COMMENT	Excerpt: 12	Type: General Support
However, in the interest of supporting local fisheries and public health protection, we are willing to collaborate with the State and Regional Water Boards to minimize mercury impacts to the extent that it is practical and feasible and does not interfere with our or member agency reservoir operations that are focused on water supply or water rights.			
Response: Comment noted.			
Letter: SDCWA1, Pg2, P2	COMMENT	Excerpt: 13	Type: Choose an item.
Collaboration should focus in the areas of informing the public, improving air quality, working collaboratively on fisheries management, and participating in pilot studies that may result in better science and innovative solutions.			
Response: Please see Response to Comment WSPA2 - 83. In addition, chapter 6, Sections 6.9 through 6.14 of the Staff Report considers and provides an analysis of the various issues and options related to control of various sources of mercury and exposure.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 14	Type: Too Complex
While the Staff Report and SED include important information on the proposed beneficial uses, sources of mercury, pathways for bioaccumulation of mercury, human and wildlife exposure, and public health impacts, there remain a significant number of data and information gaps in all of these areas that requires further research and pilot programs.			
Response: Please see Responses to Comments MerCID1-49, and 50 regarding data insufficiencies.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 15	Type: No Path for Compliance
Furthermore, as previously noted, the Board is in the process of developing a Reservoir Policy, which is currently undefined and has not been adequately addressed in the SED or the Staff Report.			
Response: Please see the Staff Report, Section 1.6.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 16	Type: No Path for Compliance
Indeed, in some places the Staff Report implies that the Reservoir Policy may be superseded by the Provisions and at the same time suggests that it will proceed as an independent program.			
Response: Please see the Staff Report, Sections 1.6; 2.6.4; 6.13.3; 8.7.2; and N.1.1.			

Responses to Comments—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 Mercury Provisions.

Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 17	Type: No Path for Compliance
The lack of available scientific information is resulting in the inability of the State Water Board to propose a realistic solution, and the development of extremely stringent mercury standards that are unlikely to be attainable.			
Response: Please see Responses to Comments ACWA1-31, 145, and 146 regarding insufficiencies in implementation. Please see Responses to Comments MerCID1-49 and 50 regarding data insufficiencies.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 18	Type: Too Complex
As a result, the proposed Provisions will result in a significant number of waterbodies that are listed as impaired with no real possibility of achieving water quality objectives (WQOs) while at the same time potentially creating avoidable conflicts over in-stream flows and who bears responsibility for “clean up” of impairment that no water agency played a role in creating.			
Response: Please see Responses to Comments WSPA2-53, 79, and CVCWA1-29.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 19	Type: Economics
Moreover, our member agency and dischargers may face stringent and costly requirements which are not likely to result in a measurable reduction in fish tissue mercury concentrations.			
Response: Please see Response to Comment WSPA2-12.			
Letter: SDCWA1, Pg2, P3	COMMENT	Excerpt: 20	Type: No Path for Compliance
If requirements associated with the beneficial uses, WQOs, or impaired water body listings interfere with the primary purpose and use of the reservoirs which is to supply a safe and reliable water supply, this may drive the water agencies to restrict public access to agency owned local reservoirs, eliminating important beneficial uses such as fishing.			
Response: Please see Response to WSPA2-8. As stated in the staff report, the narrative allows objectives to be tailored based on site-specific data. This approach was recommended during external peer review. Please also see Appendix S.			
Letter: SDCWA1, Pg3, P1	NOT COMMENT	Excerpt: 21	Type: Summary
We request that the State Board take a measured and phased approach to establishing and defining the WQOs for mercury, while taking a proactive approach that can meaningfully address the mercury problem, which includes the following:			
Response: Comment noted			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 22	Type: No Path for Compliance
Adopt statewide narrative WQOs for tribal subsistence fishing and wildlife protection. Numeric WQOs should not be adopted until additional studies are conducted and site specific information is gathered. Both tribal subsistence fishing and subsistence fishing WQOs should be based on actual waterbody specific fishing patterns. For wildlife WQOs, additional bioaccumulation studies are needed to understand the relationship between water column concentrations and bioaccumulation in reservoirs, and mercury impacts to different wildlife species. Numeric WQOs could still be set locally by the Regional Water Boards based on site specific data.			
Response: Please see Responses to Comments WSPA2-14 and 36.			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 23	Type: Let EPA Promulg.

Responses to Comments—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 Mercury Provisions.

Adopt a fish tissue methylmercury WQO of 0.3 mg/kg consistent with the EPA National Criterion with an intent to revisit that standard in five to ten years when more information is available. This WQO will protect both human health and wildlife.			
Response: Please see Response to Comment ACWA1-252.			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 24	Type: Outreach
Develop a comprehensive outreach plan to the public on fish consumption through collaboration with OEHHA, DFW, and reservoir owners and managers to ensure public health protection.			
Response: Please see the Staff Report, Section 6.14.3 and Appendix M (Table M-1).			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 25	Type: Mines/Language suggestions
Incorporate mercury standards in discharge permits for the most significant contributors of mercury such as mines.			
Response: Please see Response to Comment MerclD1-51.			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 26	Type: Outreach
Collaborate with the California Air Resources Board to develop a proactive approach to reducing mercury contamination through air deposition.			
Response: Please see the Staff Report, Section 6.14.3.			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 27	Type: Outreach
Implement a research plan in collaboration with other state agencies, water suppliers and dischargers which includes pilot studies on mercury control approaches including but not limited to: fisheries management that minimizes the number of large sized trophic level 4 fish, reservoir management, beneficial construction and operation of wetlands, and minimization of further mercury pollution.			
Response: Please see the Staff Report, Section 6.14.3.			
Letter: SDCWA1, Pg3, P1	COMMENT	Excerpt: 28	Type: Guidance
Provide additional objective criteria in the Provisions to guide the currently unrestricted designation actions of the Regional Boards with regard to future designation of beneficial uses and WQOs. Specifically, the Provisions should be amended to ensure the Board and future Regional Board designation decisions that: (a) comply with Water Code Sections 13241, 13241 and 40 C.F.R., Section 131.3(e) and (b) only designate new beneficial uses upon a showing that such uses currently and actively exist in the watershed where the use is proposed.			
Response: Please see Responses to Comments WSPA2-8, 13, 34, CVCWA1-36, and Staff Report Sections 6.4.2 and 6.4.3.			
Letter: SDCWA1, Pg4, P1	NOT COMMENT	Excerpt: 29	Type: Greet/Ending
Thank you for consideration of our comments. Please contact Lesley Dobalian with any questions at (858) 522-6747.			
Response: Comment noted.			
Letter: SDCWA1, Pg5, P1	COMMENT	Excerpt: 30	Type: No Path for Compliance
Topic: Beneficial Uses and WQOs			
Issue or concern:			

Responses to Comments—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 Mercury Provisions.

The Staff Report and Substitute Environmental Documentation (SED) does not provide an adequate analysis of potential impacts of adopting the proposed beneficial uses and water quality objectives (WQOs) on water rights and water supply. The tribal beneficial uses could potentially be based on any historical tribal use regardless of current conditions.

Comment:

The SED should analyze potential direct and indirect impacts of designating the Tribal Tradition and Culture and Tribal Subsistence Fishing (T-SUB) beneficial uses on different waterbody types at a programmatic level. It should consider potential impacts to water supply and water rights that could result if historical practices are in a conflict with current water operations and infrastructure. It should also evaluate whether implementing the proposed WQOs will result in potential direct and indirect impacts to water supply and reservoir operations.

Response: Please see Response to MerclD1-59 and 63 regarding potential impacts on water users and MerclD1-28 regarding analysis of beneficial uses. Please see MerclD1-29 and AWCA_CWA1-165 regarding potential impacts to water quality.

Letter: SDCWA1, Pg5, P2	COMMENT	Excerpt: 31	Type: Choose an item.
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Topic:

Tribal Subsistence Fishing WQO

Issue or concern:

The statewide numeric Tribal Subsistence Fishing WQO is based on fishing data primarily associated with tribes in northern California. The report used had limited data on tribal fishing patterns in southern California and no data from San Diego County.

Comment:

Due to limited statewide data, the Tribal Subsistence Fishing WQO should be narrative rather than numeric, to support development of waterbody specific criteria based on actual fishing patterns. We support the statement contained in the SED on page 93 that states that EPA “strongly believes that States and authorized Tribes should develop criteria, on a site specific basis, that provide additional protection appropriate for highly exposed populations”. There is no evidence that the proposed numeric WQO is appropriate for San Diego, so it should not be established for statewide application.

Response: Please see Response to Comment CIEAEtA11-6.

Letter: SDCWA1, Pg5, P3	COMMENT	Excerpt: 32	Type: language
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Topic:

Insignificant Discharge Exemption

Issue or Concern

Water column thresholds are proposed to be implemented for municipal wastewater and industrial discharges. Provisions allow an exception for

effluent limitations for insignificant discharges, at the discretion of the Regional Board.			
Comment: Revise the SED to include examples of the types of discharges that may use this exception, such as for drinking water system discharges, non-potable recycled water use, potable reuse projects, and live stream discharges where there is no identified impairment.			
Response: Please see Response to Comment CVCWA1-22. SEG			
Letter: SDCWA1 , Pg 6 , P 1	COMMENT	Excerpt: 33	Type: Water Quality Objectives
Topic: Phased approach and WQOs			
Issue or Concern: The State Board’s proposed Implementation Plan is unlikely to achieve the proposed WQOs, especially in reservoirs and lakes where the primary source of mercury is air deposition. The proposed mercury WQO for sport fishing of 0.2 mg/kg methylmercury in fish tissue will result in a significant increase in listings of impaired waterbodies with no reasonable ability to establish TMDLs to achieve this WQO in the foreseeable future. The EPA has established a National Criterion of 0.3 mg/kg to protect human health, which also provides wildlife protection.			
Comment: WQOs should be established using a phased approach that relies on EPA’s National Criterion of 0.3 mg/kg methylmercury. This approach will protect human health as well as wildlife. The SED identifies this option for establishing the sport fishing WQO to protect human health (Option 4 on page 96). The fish consumption rate associated with this criterion translates to a more readily achievable WQO and allows time for waterbody specific studies to establish accurate fish consumption patterns. The Regional Boards may adopt more stringent mercury WQOs for waterbodies if appropriate based on site specific data. A phased approach is also appropriate for the wildlife WQOs and Tribal Subsistence Fishing WQO, due to the considerable uncertainty associated with the proposed numeric WQOs. The EPA National Criterion will provide wildlife protection while studies are conducted to establish WQOs with more certainty. This option should be analyzed in the SED. The phased approach could also include a program to collaborate to reduce atmospheric deposition, reduce public health exposure and explore other pilot studies to reduce methylation or remove larger fish with higher mercury concentrations.			
Response: Please see Responses to Comments WSPA2-3, and 83. In addition, chapter 6, Sections 6.9 through 6.14 of the Staff Report considers and provides an analysis of the various issues and options related to control of various sources of mercury and exposure.			
Letter: SDCWA1 , Pg 6 , P 2	COMMENT	Excerpt: 34	Type: Nutrient Runoff Control

Topic: Nutrient Control			
Issue or Concern Higher nutrient loading to lakes and reservoirs increases anoxic conditions near the sediment-water interface that promotes mercury methylation and increases the potential for bioaccumulation in fish.			
Comment: The SED should identify methods to control nutrient runoff from the watershed to reduce bioaccumulation. Reducing nutrient runoff from the watershed will also help prevent eutrophication.			
Response: Nutrient control is not within the scope of the Provisions.			
Letter: SDCWA1, Pg7, P1	COMMENT	Excerpt: 35	Type: Outreach/Collaboration
Topic: Atmospheric Deposition			
Issue or Concern Global atmospheric deposition is the primary source of mercury in reservoirs in San Diego County. The proposed Implementation Plan will do little to address atmospheric deposition of mercury in reservoirs.			
Comment: Implementation should include a commitment by the SWRCB to develop a plan to work with EPA and the California Air Resources Board to control mercury emissions from atmospheric deposition.			
Response: Please see the Staff Report, Section 6.14.3.			
Letter: SDCWA1, Pg7, P2	COMMENT	Excerpt: 36	Type: Public Outreach Program
Topic: Public Health Exposure Reduction Program			
Issue or Concern The Staff Report does not provide a plan to protect public health through education and outreach.			
Comment: Implementation should include a commitment by the SWRCB to work with the California Department of Fish and Wildlife, the Office of Health Hazard Assessment, and the Department of Public Health on a public health exposure reduction program. This program could also include the			

removal of larger fish with higher mercury concentrations from the waterbodies.			
Response: Commenter suggests that the State Water Board develop a statewide public health exposure reduction program with OEHHA. It is uncertain why the State Water Board should and OEHHA develop a new public health exposure reduction program when there are at present multiple efforts by agencies to achieve this, such as the Department of Toxic Substance Control’s Safer Consumer Products program as well as numerous local mercury recycling programs. The State Water Board and OEHHA, in addition to the California Department of Public Health have also launched public information campaigns. See Appendix E of the Staff Report for details. Regarding collaboration and public outreach please see the Staff Report, Section 6.14.3 and Appendix M (Table M-1).			
Letter: SDCWA1, Pg7, P3	COMMENT	Excerpt: 37	Type: Wetlands
Topic: Constructed Wetland			
Issue or Concern: The proposed required design features to reduce methylation could be onerous for permitting wetlands. Constructed wetlands provide multiple benefits including treatment to improve water quality. Although the SED discusses the potential for wetlands to act as a sink for methylmercury, and for seasonal wetlands to general methylmercury, it provides minimal discussion on the potential benefits of constructed wetlands in removing mercury from the environment.			
Comment: The Provisions should not create an unreasonable hurdle for permitting wetlands projects. The SED should include the benefits of constructed wetlands in improving water quality and removing mercury from the environment. The State Board should support and encourage additional research on the benefits of wetlands as it relates to methyl mercury and other toxic contaminants.			
Response: Please see Appendix Q; Staff Report Sections 2.3.3, 4.4.7, and 6.10; and Response to Comment ACWA1-32.			
Letter: SDCWA1, Pg7, P4	COMMENT	Excerpt: 38	Type: Dredging/Language
Topic: Dredging Projects			
Issue or Concern: Dredging requirements could create an impediment to dredging reservoirs, which could be needed for management of water quality and reduced methylation in reservoirs.			
Comment: The Provisions should not create an unreasonable hurdle for permitting dredging projects.			
Response: Please see Response to Comment SDCWA1-4. Also, Please see Appendix F of the Staff Report.			

Letter: SDCWA1, Pg7, P5	COMMENT	Excerpt: 39	Type: Reservoir Program
<p>Topic: Reservoir Program</p> <p>Issue or Concern The SED does not adequately address the proposed Reservoir Program because it has not been developed. The established WQOs have the potential to create future mandates associated with water supply reservoirs which are unknown at this time.</p> <p>Some of our member agencies have raised concerns about the age and validity of mercury data utilized for proposed impairment listings under the Board’s Reservoir Policy. Additionally, data used to make the proposed listings is from 2010 or earlier.</p> <p>Some of our member agencies are concerned that Regional Boards may, as part of Mercury Minimization Programs Imposed on Non-Point Sources of mercury pollution, seek to impose WDRs or WDR Waivers (as seemingly endorsed by Section IV.D.5 of the Provisions) by mandating costly BMPs that have the undesired effect of preventing runoff or tributary flows from entering a reservoir (thereby reducing local water supply).</p> <p>Comment: The SED is inadequate because it does not address impacts to reservoir operations and management that may result from any impaired waterbody listings or requirements intended to achieve WQOs. This information should be analyzed in the SED. The Provisions, and the SED should provide additional information on the future implementation of the Reservoir</p> <p>Under normal reservoir operations, we would like to be clear that reservoir operators are not dischargers. In addition, we ask that you revise the Provisions at Section IV.D.5 to clarify that the Regional Boards shall not impose requirements on dischargers that result in reduced flows into the reservoir or interfere with an agency’s water rights without the agreement of the water supplier.</p> <p>Response: Please see Response to Comment ACWA1-180. (SEG)</p>			
Letter: SDCWA1, Pg8, P1	COMMENT	Excerpt: 40	Type: Beneficial Uses
<p>Topic: In stream flow and fish quantity requirements</p> <p>Issue or Concern Absent direction to the contrary in the Staff Report and/or the Provisions, the proposed new beneficial uses are likely to result in the development of flow and fish quantity WQOs with the potential to frustrate current operation of reservoirs for water supply and the exercise of long established water rights. See, Staff Report at p. 110 (“The State Water Board may develop a flow objective if the flow objective is necessary</p>			

for the reasonable protection of a beneficial use.”)

Comment

The Provisions should clarify that new beneficial uses and objectives should be implemented in a manner as to provide the least amount of interference with exercise of existing water rights and performance of reservoir operations.

Response: Please see Appendix T, Question 1.

ECarsonJR1**Author:** Erica Carson Jr. **Title:** MS. **Organization(s):** Redwood Valley Little River Band of Pomo Indians**Address:** 1015 Redwood Dr., Redwood Valley CA 95475 **Interest Group:** CATribes**Date:** 2/14/2017**Contact person:** Erica Carson JR **Phone:** 707-391-7128 **E-mail:** Lilawa4pomo2@yahoo.com

Letter: ECarsonJR1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self description
I am a Member of The Redwood Valley Little River Band of Pomo Indians of Redwood Valley Ca. I have all my life lived being naitive. As early as I remember we would gather out of the ocean, lakes, and rivers for the traditional foods that were in season. We have rights of passage ceeremonies in the waters also pray to the waters for all they provide. Water is the main source of our survival as traditional people.			
Response: Statement noted.			
Letter: ECarsonJR1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Request
We request the State Water Board, through its public trust and public interest authorities, continue to protect all existing uses of waters.			
Response: Request is noted.			

ElemIC2**Author:** Karola Kennedy **Title:** Environmental Director **Organization(s):** Elem Indian Colony**Address:** [Click here to enter text.](#) **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** Karola Kennedy **Phone:** 707-994-3400 **E-mail:** kkarolaepa@gmail.com

Letter: ElemIC2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
<p>On behalf of the Elem Indian Colony. We thank you for this opportunity to comment on the SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives. For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan. We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals. It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.</p> <p>The legacy of Mercury in California land and waters a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their inherent responsibility to protect the environment that that sustains their Peoples and all living things. When addressing the toxicity that persists from this era it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Provisions.</p> <p>In order to assist in the success of this Plan and efforts that will stem from it we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions, including the Staff Report the SED and the Provisions within, referred to as the Plan throughout this document:</p>			
Response: Statements noted.			

Responses to Comments—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 Mercury Provisions.

Letter: ElemIC2 Pg2, P6	COMMENT	Excerpt: 2	Type: Beneficial Uses Beneficial Uses
<p>Continued inclusion of CUL, T-SUB and SUB</p> <p>As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographicunit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subds. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations. Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice culture and to eat traditional foods it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete.</p> <p>The SWRCB staff are to be commended in their assistance to CA Tribes and the environmental justice community in the creation of the three proposed beneficial use definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.</p> <p>Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely “tribal traditional and cultural uses” and “tribal subsistence fishing” in order that they could be applied statewide.</p> <p>Definition development began with the language first adopted by Region 1 and for four years we worked to revise these with Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Provisions which unfortunately changed these definitions as follows:</p> <p>In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm that cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase “as affirmed by California Native American Tribe(s),” was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.</p> <p>In the Provisions staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of “minimal,” which we note may</p>			

be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word “fundamental” purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.

Recommendations:

- Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses
- That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily.
- We recommend the following revisions to these definitions in order to return them to their original meaning and intent:

Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]

Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal [fundamental] needs for sustenance.

Response: Please see Response to Comment CIEAEtA11-3.

Letter: ElemIC2 , Pg3, P17	COMMENT	Excerpt: 3	Type: Bioavailability of Hg
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Bioavailability of Mercury

We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bioaccumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8.

Recommendation:

- That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations.

Response: Please see Response to Comment CIEAEtA11-4.

Letter: ElemIC2 , Pg4, P19	COMMENT	Excerpt: 4	Type: Beneficial Uses/WQOs Beneficial Uses
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Current and Future Use of the Beneficial Use Provisions:

Page xvii of the Executive Summary states that “the implementation provisions do not apply to discharges to receiving waters for which a

mercury total maximum daily load is established.” This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word “is.”

Page xviii states that associated mercury WQOs related to subsistence beneficial uses (TSUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.

Recommendations:

- That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments.
- That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates.
- We recommend that this forward thinking sentiment also be extended explicitly in the Plan to the continued application of Tribal Cultural beneficial use.

Response: Please see Responses to Comments WSPA2-27, 29, and CIEAetA11-5.

Letter: ElemIC2 , Pg4, P24	COMMENT	Excerpt: 5	Type: Fish consumption – WQO Fish tissue - WQO
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Strengthening of the T-SUB Water Quality Objectives

This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is “the same as the U.S. EPA nationally recommended subsistence rate.”

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.

Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.5 8 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the

advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful and culturally acceptable subsistence fishing diet in California.

We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California's beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 85417, November 28, 2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems.

The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported "CA Tribal Fish Consumption Study" (SWRCB- UC Davis, 2016), which reported that a mixture of TL4 and trophic TL3 fish are currently consumed by CA Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% TL3/30% TL4 mixture, and that all Tribes do not consume the same fish species.

Before and following the release of the SWRCB-UC Davis study CA Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species TL4 fish either because the fish were historically consumed at greater rates, or as in the case of non-native species the TL3 fish is no longer available. When the TL3 fish is not available the prevalent fish often has been replaced by an invasive TL4 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed T-SUB fish tissue objective of 142 grams per day.

We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides an overview of CA Tribal fish consumption patterns it is not exhaustive and it can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.

We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to

achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.

Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows

- That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) based on a fish consumption rate of 175 grams per day, allowing safe consumption of fish at 5-6 meals per week,
- That the Plan affirm that this WQO is a minimum statewide standard,
- That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level
- That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat, and
- That the Plan include language regarding the applicable state and federal antidegradation or anti-backsliding provisions
- It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals per week.

CUL Water Quality Objective Considerations

We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.

Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.

Recommendation: 6.6 Issue F. – Yes, Option 3/amended as follows

- We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses.
- That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses.

Revisit the RFC

The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methylmercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).

The calculation for the Mercury WQOs to protect human health describes the RSC as follows:

RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weight-day. Is this accurate in coastal areas of Northern CA where populations eat more locally caught fish and the fish that is purchased is also locally sourced?

Recommendation:

- That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation.

Response: Regarding the recommendations for 6.5 Issue E please see Response to Comment CIEAetAl1-6. Regarding the recommendations for 6.6 Issue F please see Response to Comment CIEAetAl1-7. Regarding the recommendation for the RSC please see Response to Comment CIAEtAl1-8.

Letter: ElemIC2 , Pg7, P45	COMMENT	Excerpt: 6	Type: Beneficial Uses
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Evidence in Designating Beneficial Uses

On Pg. 111 the Plan text states that *"The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses."* The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils.

We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: *"However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition."* There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.

Recommendation:			
<ul style="list-style-type: none"> • That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level. • That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use. 			
Response: Please see Response to Comment CIEAetA11-9.			
Letter: ElemIC2 , Pg8, P49	COMMENT	Excerpt: 7	Type Expand definition of TL4 Sturgeon
Expand Examples of Trophic Level 4 Fish			
We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.			
Recommendation:			
<ul style="list-style-type: none"> • Include sturgeon in the definition section of the Plan text as follows: TROPIC LEVEL 4 FISH (TL4): Fish that consume TROPIC LEVEL 3 fish and other aquatic organisms. [Examples of these s]pieces include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pikeminnow. Examples are shown in Attachment C. 			
Response: Please see Response to Comment CIEAetA11-10.			
Letter: ElemIC2 , Pg9, P51	COMMENT	Excerpt: 8	Type: Include Tribal consultation
Include information regarding Tribal Consultation			
We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that:			
<p>“Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))”</p>			
This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation			

under AB52, SB18 and Executive Order B10-11.

Recommendation:

- That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, "Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes." Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal selfgovernment and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those polices. One example is the policy developed by the Karuk Tribe.

Response: Please see Response to Comment CIEAetA11-11.

Response: The comments and recommendations to include references to the above executive orders and legislation are noted. The State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) contains significant detail regarding State Water Board outreach efforts to consult California Native American tribes, including Early Public Consultation/Scoping (Section 2.6.3), Focus Group Meetings (Section 2.6.4 and Table 2-1), Tribal and Subsistence Fishing Beneficial Uses Outreach Meetings (Section 2.6.5 and Table 2-2), and Notice to California Native American Tribes of Opportunity for Consultation (Section 2.6.6). These sections also include detail regarding the policies and legislation that requires consultation with California Native American tribes. Chapter 2 of the Staff Report contains substantially adequate detail to notify agencies and stakeholders of their responsibilities regarding Consultation with California Native American tribes on this project.

With respect to Executive Order 13175 and S.B. 18, those do not place recommendations or requirements on a state agency, such as the State Water Board, as they pertain to federal agencies or cities and counties, respectively. The Staff Report, at Section 2.6.6, specifically details A.B. 52’s formal notice and consultation requirements the State Water Board construes as applying to the development of the Staff Report and consideration of the Provisions and provides that the State Water Board satisfied those requirements. Finally, with respect to Executive Order B-10-11, it provides that it is the policy of the administration of the Governor of the State of California that every state agency encourages consultation and communication with California Indian Tribes and permit tribal governments to provide meaningful input in the development of regulations, rules, and policies that may affect tribes. The State Water Board’s website contains information and resources for the Office of Public Participation for Tribal Affairs, including A.B. 52 and the Governor’s order. The Staff Report, at Section 2.6.3, has been revised to incorporate the policy of Executive Order B-10-11.

Letter: **ElemIC2**, Pg10, P60

COMMENT

Excerpt: 9

Type: City Names error City Names erro

Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in “Loleta (Eureka).” This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor.

Response: Please see Response to Comment CIEAetA11-12.

Letter: ElemIC2 , Pg10, P62	COMMENT	Excerpt: 10	Type: Beneficial Uses
<p>Statement of Necessity for Beneficial Uses</p> <p>In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain “to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals.” (Resolve Clause No. 1).</p> <p>Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, REC1, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • That the Plan text in 3.2 be revised to include the following bracketed text as follows: <p style="padding-left: 40px;">these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order “to create a consistent set of beneficial uses to be used” (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional Water Board defines such activities in a water quality control plan...</p>			
<p>Response: Please see Response to Comment CIEAetA11-13.</p>			
Letter: ElemIC2 , Pg11, P65	COMMENT	Excerpt: 11	Type: Fish consumption
<p>Inclusion of Clear Fish Consumption Messaging</p> <p>In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.</p> <p>Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.</p> <p>Recommendation:</p>			

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et.al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus atrisk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

Response: Please see Response to Comment CIEAetAl1-14.

Letter: **ElemIC2**, Pg 12,
P68

NOT COMMENT

Excerpt: 12

Type: Greet/Ending

Thank you!

We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

Response: Comment noted.

CarlsbMWD1**Author:** Wendy Chambers **Title:** General Manager **Organization(s):** Carlsbad Municipal Water District**Address:** 5950 El Camino Real, Carlsbad, CA 92008 **Interest Group:** Choose an item.**Date:** 2/17/2017**Contact person:** Wendy Chambers **Phone:** 760-438-2722 **E-mail:** N/A

Letter: CarlsbMWD1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Carlsbad Municipal Water District (District) appreciates the opportunity to provide comments regarding the Proposed Mercury Regulations. The District provides ratepayers with safe, high quality water supplies and the safety of that supply is our primary goal.			
Response: Thank you for your comment.			
Letter: CarlsbMWD1, Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
We respectfully request that the State Water Resources Control Board (SWRCB) delay action on the proposed Mercury Regulations until stakeholders have an opportunity to thoroughly review the lengthy staff report and proposal, and can offer comments. Additional time is needed to convene in order to thoroughly understand and discuss impacts to local water and wastewater agencies.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CarlsbMWD1, Pg1, P3	COMMENT	Excerpt: 3	Type: Request: More Time
As such, the District requests that SWRCB extend the process and not approve the Provisions as currently written. The SWRCB should continue to work with stakeholders to study and develop a program that achieves measurable mercury reductions without substantial cost increases to water and wastewater ratepayers. If cost increases are eventually needed, then it would be wise for the state and local agencies to have a well-documented and vetted program in place to substantiate any necessary increases through cost of service studies. It would appear that a thorough process would therefore require more time.			
Response: Please see Responses to Comments WSPA2-2 and ACWA1-22.			

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Letter: CarlsbMWD1, Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Greet/Ending
Please feel free to contact me should you have any questions regarding the District's position relative to this matter.			
Response: Thank you.			

TheOCPW2

Author: Chris Crompton **Title:** Manager Water Quality Compliance **Organization(s):** OC Public Works

Address: 300 N Flower Street, Santa Ana, CA 92703 **Interest Group:** POTW

Date: 2/17/2017

Contact person: Richard Boon **Phone:** 914-955-0670 **E-mail:** [Click here to enter text.](#)

Letter: TheOCPW2, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/beginning
<p>The County of Orange, as Principal Permittee of the Orange County Stormwater Program, and the Orange County Flood Control District (collectively, "County") appreciate the opportunity to provide comments on <i>Proposed 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 Mercury Provisions</i>, which was distributed for public review on January 4, 2017 (referred to hereinafter as the "Draft Beneficial Uses and Mercury Objectives"). The County, along with co-permittee cities named herein-below, hereby joins in the comments submitted by the California Stormwater Quality Association (CASQA), and incorporates those comments by reference as though fully set forth herein. The County provides the following comments, which the co-permittee cities of Aliso Viejo, Dana Point, Irvine, La Palma, and Mission Viejo have directed that they be recognized as concurring entities.</p>			
<p>Response: Thank you for your comment.</p>			
Letter: TheOCPW2, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary
<p>The State Water Resources Control Board (State Water Board) proposes to establish (a) three beneficial use definitions pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use; (b) one narrative and four numeric mercury water quality objectives to protect numerous beneficial uses of water involving human health and aquatic dependent wildlife; and (c) a program of implementation to control mercury discharges. In addition, the State Water Board is proposing to align the adoption of these items with the timeline stipulated within the U.S. EPA Consent Decree¹ so that U.S. EPA's obligation to establish mercury water quality criteria for aquatic life and aquatic-dependent wildlife would be satisfied.</p>			
<p>Footnote 1: <i>Our Children's Earth Foundation and Ecological Rights Foundation vs U.S. EPA</i>, No. 3:13-cv-2857-JSW (2014)</p>			

Responses to Comments—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 Mercury Provisions.

Response: Statement noted.			
Letter: TheOCPW2 , Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Summary/Intro
We provide comments herein to address issues of particular concern for the municipal stormwater programs in Orange County, which focus on the process and timeline for the adoption of the Draft Beneficial Uses and Mercury Objectives, the proposed beneficial use designations, and the program of implementation for municipal stormwater dischargers.			
Response: Statement noted.			
Letter: TheOCPW2 , Pg2, P1	COMMENT	Excerpt: 4	Type: Request: More Time
The State Water Board should extend the timeline for the adoption of the proposed beneficial uses, water quality objectives, and program of implementation.			
The County understands that the State Water Board intends to adopt the Beneficial Use definitions and Mercury Objectives prior to June 30, 2017 to, in part, assist U.S. EPA in complying with a Consent Decree. While we support the State Water Board's effort to promulgate such water quality objectives for California, attempting to meet the U.S. EPA driven June 30, 2017 deadline will prevent a robust, informed public review and feedback process for this rulemaking, some of which we saw for the first time on January 4.			
Response: Please see Responses to Comments WSPA2-2 and ACWA1-19.			
Letter: TheOCPW2 , Pg2, P3	COMMENT	Excerpt: 5	Type: More time
Considering the broad scope of the action proposed and the voluminous nature of the material (over 700 pages of information and technical analyses), including the adoption of multiple mercury numeric and narrative water quality objectives, the creation of new beneficial uses, the interplay with in-stream flow requirements (which was the subject of a February 1 workshop), and the actions within the implementation plan, the County requests either: <ul style="list-style-type: none"> • An extension of time be sought under the U.S. EPA Consent Decree and additional steps added to the public process for this rulemaking²; or • Bifurcate the U.S. EPA obligation to develop water quality criteria for wildlife (the proposed prey fish and California least tern prey fish objectives) by June 30, 2017, from the remaining portion of the proposal and add additional time and steps to the public process for the remaining portions of this rulemaking. 			
Footnote 2: Original letter sent to State Water Resources Control Board January 25, 2017; <i>Comment Letter – Beneficial Uses and Mercury Objectives: Request for Extension of Time.</i>			
Response: Regarding the request for a time extension please see Response to Comment WSPA2-2. Regarding bifurcation please see Response to Comment WSPA2-3.			

Letter: TheOCPW2 , Pg2, P4	NOT COMMENT	Excerpt: 6	Type: More time
<p>Either option would still allow the State Water Board to adopt objectives consistent with the terms of the Consent Decree while allowing appropriate time and consideration for the development of water quality objectives, beneficial use definitions, and a program of implementation that are not part of the terms of U.S EPA's Consent Decree.</p> <p>Response: Statement noted.</p>			
Letter: TheOCPW2 , Pg2, P4	COMMENT	Excerpt: 7	Type: Time schedule
<p>The County therefore requests:</p> <p>Pursue one of the options above and revise the schedule as follows:</p> <ul style="list-style-type: none"> • Extend the public comment period by 60 additional days to about mid-April 2017; • Postpone the State Water Board's first hearing on this issue until May 2017; • Provide additional opportunity for the submission of written public comments on any revisions; and • Hold the final hearing for consideration of adoption in the Fall of 2017. 			
<p>Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.</p>			
Letter: TheOCPW2 , Pg2, P6	COMMENT	Excerpt: 8	Type: BUs/WQOs
<p>The State Water Board should provide guidance or direction for the designation of the newly proposed beneficial uses.</p> <p>Beneficial uses are the underpinning of water quality based regulations and drive permit provisions, enforcement actions, and many other decisions of the Regional Water Boards as well as the State Water Board. Once established and applied to a specific waterbody, corresponding discharge permits must include provisions that ensure that such uses are protected and maintained.</p>			
<p>Response: Please see Response to Comment CASQA2-12.</p>			
Letter: TheOCPW2 , Pg3, P1	COMMENT	Excerpt: 9	Type: Water Quality Objectives
<p>The associated numeric and narrative water quality objectives could become receiving water limitations and/ or total maximum daily wasteload allocations within the permits that, in the case of mercury, may be extremely difficult to meet because the stormwater permittees have little control over the primary source(s), including geological background and atmospheric deposition. The County recognizes that it is important to protect and maintain water quality for the range of designated beneficial uses assigned to a particular water body. Unfortunately, the history of beneficial use designations in California has, at times, resulted in the application of impractical beneficial uses for some of the waterbodies, which has then resulted in the inappropriate application of receiving water limitations and/ or TMDL wasteload allocations. To avoid such</p>			

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unintended consequences, it is imperative that there be clear direction/ guidance regarding what types of waterbodies are appropriate for designation of the proposed uses, and the nature and quality of information necessary for a water body to be designed under the newly proposed beneficial uses.			
<p>Response: The Water Board that has jurisdiction over a particular waterbody is in the best position to evaluate the appropriateness of a designation and is consistent with the long-standing practice. (Staff Report, Section 6.4.3.) “A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).” (Ibid.; see also Staff Report, App. T.4-T.6 (discussing the manner in which designations would occur.)) Finally, the Staff Report (p. 109) provides that it “may not be reasonable to designate a beneficial use [...] if only one individual is using the water in a way that would meet the beneficial use definition.”</p>			
Letter: TheOCPW2 , Pg3, P2	COMMENT	Excerpt: 10	Type: Hg WQO Implementation
<p>However, the Draft Beneficial Uses and Mercury Objectives does not provide guidance or direction to the Regional Water Boards as to how and when the proposed uses should be designated. The Draft Staff Report does not discuss considerations of seasonality, realistic expectations for attainment of the uses, and other uses of the water. Porter-Cologne mandates that Regional Water Boards and the State Water Board regulate water quality to ensure the reasonable protection of beneficial uses and the prevention of nuisance, considering all the demands made on the water (Water Code§ 13000, 13241). Accordingly, it is important that both the proposed Inland Surface Waters Plan (ISWP) language and the Draft Staff Report instruct the Regional Water Boards to consider multiple factors, as well as the minimum data and informational requirements that need to be considered prior to designating these beneficial uses to waterbodies within their regions.</p>			
<p>Response: The Water Board that has jurisdiction over a particular waterbody is in the best position to evaluate the appropriateness of a designation and is consistent with the long-standing practice. (Staff Report, Section 6.4.3.) “A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).” (Ibid.; see also Staff Report, App. T.4-T.6 (discussing the manner in which designations would occur.)) Finally, the Staff Report (p. 109) provides that it “may not be reasonable to designate a beneficial use [...] if only one individual is using the water in a way that would meet the beneficial use definition.” In addition, please see Responses to Comments CASQA2-12 and CVCWA1-35.</p>			
Letter: TheOCPW2 , Pg3, P3	COMMENT	Excerpt: 11	Type: Developing RB guidance in implementation
<p>The County requests:</p> <p>Revise the ISWP language and the Draft Staff Report to provide guidance/ direction regarding the various factors, including corresponding data and information that the Regional Water Boards and the State Water Board need to consider prior to designating a waterbody with any of the newly proposed beneficial use definitions.</p>			
<p>Response: Please see Responses to Comments WSPA2-13 and CVCWA1-36 and Staff Report Sections 6.4.2 and 6.4.3, and Appendix T, Question 6.</p>			

Letter: TheOCPW2 , Pg3, P4	COMMENT	Excerpt: 12	Type: Attainability
<p>The Draft Staff Report fails to identify the need for Use Attainability Analysis prior to designation by Regional Water Boards, or provide Regional Water Boards with direction for application of the newly proposed beneficial uses.</p> <p>Federal regulations require a state to conduct a use attainability analysis as described in 40 C.F.R., 131.1 0(g) when a state designates uses that do not include the uses specified in section 101(a)(2) of the Clean Water Act (CWA). The uses in section 101(a)(2) are for the protection and propagation of fish, shellfish and wildlife, and provide for recreation in and on the waters. These uses are often referred to as the fishable-swinnrnable uses. As described in the Draft Staff Report, the proposed beneficial uses are not fishableswimmable uses, and thus any designation of such uses must only occur after the Regional Water Board has conducted a use attainability analysis pursuant to 40 C.F.R., 131 .1 0(g). In other words, before designating these uses, the Regional Water Boards and/or the State Water Board should ensure that the uses are in fact attainable, considering the factors specified in 131.1 0(g).</p>			
Response: Please see Response to Comment CVCWA1-37.			
Letter: TheOCPW2 , Pg4, P1	COMMENT	Excerpt: 13	Type: UAAs
<p>Requiring a use attainability analysis prior to use designation, which is required by federal regulations, is in direct contrast to the direction provided by the Draft Staff Report. The Draft Staff Report states that "there is no required or threshold of use that the Water Boards must consider when determining beneficial use designations." (Draft Staff Report, p. 111.) Moreover, the Draft Staff Report claims as follows" ... , beneficial uses may be designated as a goal use (or probable future use in Porter-Cologne parlance) where neither the water quality is currently being attained or the use is actually occurring, but there is evidence to indicate that the use would be a probable future use." (Draft Staff Report, p. 112.) Not only do these statements conflict with federal regulatory requirements in 40 C.F .R. 131.1 0(g), but they also provide Regional Water Boards with inappropriate direction to adopt beneficial uses that may not actually exist, or be attainable.</p>			
Response: Please see Responses to Comments CVCWA1-7, 37 and WSPA2-7.			
Letter: TheOCPW2 , Pg4, P2	COMMENT	Excerpt: 14	Type: Attainability
<p>The County requests:</p> <p>The Draft Staff Report should be revised to reflect applicable federal regulatory requirements with respect to the designation of the newly proposed beneficial uses and incorporate this requirement within the guidance mentioned above.</p>			
Response: Please see Responses to Comments CVCWA1-7, 37 and WSPA2-7.			
Letter: TheOCPW2 , Pg4, P3	COMMENT	Excerpt: 15	Type: Attainability
<p>The Draft Staff Report does not adequately consider the California Water Code §13241 factors as they relate to attainability of the water quality</p>			

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objectives.			
Response: Please see Response to Comment WSPA2-5.			
Letter: TheOCPW2 , Pg4, P4	COMMENT	Excerpt: 16	Type: Attainability/Objectives
Consistent with California Water Code (Water Code) §13241, when setting the mercury objectives, the State Water Board must consider a number of factors, including the "(c) water quality conditions that <i>could be reasonably attained</i> through coordinated control of all factors affecting water quality." [Emphasis added].			
Response: The topic of Water Quality Conditions that could Reasonably be Achieved through Coordinated Control of all factors affecting water quality was covered in section 10.1.3 (page 286) of the Draft Staff Report.			
Letter: TheOCPW2 , Pg4, P5	Choose an item.	Excerpt: 17	Type: Attainability/Objectives
Thus, the Draft Staff Report should, at a minimum, identify the requisite program of implementation necessary for achieving the proposed objectives and impacts of the program on factors listed in Water Code Section § 13241 so that there is some assurance that the proposed objectives can be reasonably attained.			
Response: The Draft Staff reports lists the factors which were covered as part of §13241 in section 2.6.9 (page 42 of the Draft Staff report) and further discusses these factors in Section 10 (pages 284-290).			
Letter: TheOCPW2 , Pg4, P6	NOT COMMENT	Excerpt: 18	Type: Hg Sources
The Draft Staff Report identifies that the "principal sources of mercury pollution to the waters within California are historic mines and atmospheric deposition ³ " and that "mercury is also present (but in smaller absolute amounts) in point-source discharges, due to a wide variety of potential industrial, commercial and residential sources." It also notes that the majority of the established mercury total maximum daily loads (TMDLs) identify the major sources of mercury as historic mines/mining legacy, historic manufacturing/processing, and atmospheric deposition ⁴ •			
Footnote 3: Executive Summary, page xx			
Footnote 4: Section 4.4.9 Sources of Mercury Identified in TMDLs			
Response: Please see Responses to Comments ACWA1-15,16, and 67.			
Letter: TheOCPW2 , Pg5, P1	COMMENT	Excerpt: 19	Type: Attainability/Objectives
The Draft Staff Report (5) includes a brief analysis regarding the water quality conditions that could reasonably be achieved (Section 10.1.3). The Report then concludes " it may take a significant period of time to attain the objectives by implementing the mercury controls in the Provisions and developing and implementing other water quality control programs, such as TMDLs. Additionally, the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective may be very difficult to achieve in most waters as discussed in Section			

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6.5."			
Footnote 5: Section 10.1.13 – <i>Water Quality Conditions that Could Reasonably be Achieved through Coordinated Control of All Factors Affecting Water Quality</i>			
Response: Please see Response to Comment CASQA2 -15.			
Letter: TheOCPW2 , Pg5, P2	COMMENT	Excerpt: 20	Type: Attainability/Objectives
However, the 13241 analysis does not, given the primary sources of mercury, assess what combination of controls and/or timeframe is necessary in order for the water quality conditions to be achieved, and if those conditions are even achievable in all cases, especially if some sources are not currently regulated by the Water Boards. For example, if there is a limited ability to control the primary sources (sediment associated with historic mines and atmospheric deposition) or there are areas where there are elevated levels of mercury in soils due to natural geology, it is unclear if the proposed objectives can be achieved, let alone reasonably attained.			
Response: See Response to Comment CASQA2 -15.			
Letter: TheOCPW2 , Pg5, P3	COMMENT	Excerpt: 21	Type: Attainability/Objectives
The County requests: The Draft Staff Report must be modified to identify a range of implementation actions (as proposed in Section 2.3.3, Section 7, and Appendix A) and discuss whether those actions would result in the proposed water quality objectives being reasonably attained, given factors such as sources of mercury. Based on the results of this 13241 analysis, the program of implementation should be evaluated to ensure that it is commensurate with the achievability of the objectives and the primary factors that drive that achievability.			
Response: Please see Responses to Comments CASQA2-15 and 16.			
Letter: TheOCPW2 , Pg5, P4	COMMENT	Excerpt: 22	Type: Hg WQO Implementation
The Draft Staff Report should fully consider the California Water Code §13242 as it relates to the implementation of the water quality objectives.			
Response: As stated in the Draft Staff Report (Section 10.2, Page 290) to comply with §13242 the Provisions includes a program of implementation in order to achieve the water quality objectives and monitoring and reporting requirements, as described in the draft Provisions (Appendix A). The time schedule for compliance would be determined on a discharge-by-discharge basis by the Water Boards. Timelines for compliance are already established by existing programs and in the State Water Board’s <i>Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits</i> (Resolution 2008-0025). After the effective date of the Provisions, the requirements to implement the Provisions would be incorporated into permits and Certifications as they are adopted, reissued, or modified.			
Letter: TheOCPW2 , Pg5, P5	COMMENT	Excerpt: 23	Type: Hg WQO Implementation

<p>Consistent with Water Code § 13242, when setting the mercury objectives, the State Water Board must consider "<i>the program of implementation for achieving water quality objectives</i>" which "shall include, but not be limited to [Emphasis added]:</p> <ul style="list-style-type: none"> • A description of the nature of actions <i>which are necessary to achieve the objectives</i>, including recommendations for appropriate action by any entity, public or private. • A <i>time schedule</i> for the actions to be taken. • A <i>description of surveillance</i> to be undertaken to determine compliance with objectives." 			
<p>Response: Please see Response to Comment CASQA2 -15.</p>			
Letter: TheOCPW2 , Pg6, P1	COMMENT	Excerpt: 24	Type: Hg WQO Implementation
<p>Although the Draft Staff Report discusses the elements of a program of implementation required by Water Code§ 13242⁶, it does not fully address subd. (a)-(c).</p> <p>Footnote 6: Section 10.2 - <i>Considerations Required by Water Code Section 13242</i></p>			
<p>Response: See Response to Comment CASQA2 -16.</p>			
Letter: TheOCPW2 , Pg6, P2	COMMENT	Excerpt: 25	Type: Hg WQO Implementation
<p>For the "description of the nature of actions <i>which are necessary to achieve the objectives</i>, including recommendations for appropriate action by any entity, public or private" the Draft Staff Report simply refers to the program of implementation within Appendix A, however it does not describe the range of actions (in combination) that would be necessary from the various sources in order to ensure that the objectives are achieved (e.g., can objectives be achieved if mines; geological background, and/or atmospheric deposition are not addressed?⁷)</p> <p>Footnote 7: The Draft Staff Report identifies the principal sources of mercury pollution to the waters within California as historic mines and atmospheric deposition, Executive Summary (pg xx)</p>			
<p>Response: See Response to Comment CASQA2 -16.</p>			
Letter: TheOCPW2 , Pg6, P3	COMMENT	Excerpt: 26	Type: Hg WQO Implementation
<p>In addition, for the time schedule, the Draft Staff Report does not recognize the likely 100+ year timeframe, noted by State Board staff at the February 7, 2017, Public Hearing, that it may take for the objectives to be achieved. Instead, it references that the time schedule for compliance will be determined on a discharge-by-discharge basis by the Regional Water Boards. It is critical that NPDES permittees not be held to a 5, 10, or 15 year timeframe when the State Water Board recognizes that the objectives will not be attained within that timeframe.</p>			
<p>Response: See Response to Comment CASQA2 -16.</p>			

Letter: TheOCPW2 , Pg6, P4	COMMENT	Excerpt: 27	Type: Hg WQO Implementation
Lastly, there is no description within Appendix A regarding the surveillance/monitoring that would need to take place to ensure that the fish tissue objectives within ambient receiving waters are progressing towards or are in attainment.			
Response: See Response to Comment CASQA2 -16.			
Letter: TheOCPW2 , Pg6, P5	COMMENT	Excerpt: 28	Type: Hg WQO Implementation
The County requests: Based on the results of the 13242 analysis, the program of implementation should be modified to ensure that it is commensurate with the achievability of the objectives and the primary factors that drive that achievability. The program of implementation must account for the controllability of the primary sources, the influence of unregulated sources, the extended timeframes necessary to achieve the objectives, and the compliance requirements for regulated discharges (especially if they are a de minimis source).			
Response: See Response to Comment CASQA2 -16.			
Letter: TheOCPW2 , Pg6, P6	COMMENT	Excerpt: 29	Type: Hg WQO Implementation
The Implementation of Water Quality Objectives (Section IV of Appendix A) should only require the implementation of best management practices (BMPs) when the municipal stormwater discharges are causing or contributing to a persistent exceedance of water quality standards.			
Response: Please see Response to Comment CASQA2 -17.			
Letter: TheOCPW2 , Pg6, P7	Choose an item.	Excerpt: 30	Type: MS4
The Implementation of Water Quality Objectives (Section IV of Appendix A) includes a <i>de facto</i> requirement that the provisions specified in Section IV.D.3 .b be incorporated in municipal stormwater NPDES permits where any of the mercury water quality objectives apply, even if the municipal stormwater permittees are already implementing a wide range of controls that address mercury, have not been found to cause or contribute to persistent exceedances of the objectives, or if there is already a TMDL. However, this is counter to other portions of the Draft Staff Report and is inconsistent with the approach taken for other stormwater permittees such as the California Department of Transportation and enrollees under the Construction General Permit. In fact, with regard to Phase I and Phase II municipal stormwater programs, the Staff Report notes:			
Response: Please see Response to Comment CASQA2 -17.			
Letter: TheOCPW2 , Pg7, P1Y	COMMENT	Excerpt: 31	Type: MS4
"For many MS4s, permits already contain such control measures and best management practices. " ⁸			

Footnote 8: Draft Staff Report, Executive Summary, page xxi			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg7, P2	COMMENT	Excerpt: 32	Type: MS4
"However, many of the existing general requirements in storm water permits can help reduce mercury in storm water. For example, Phase I and II MS4 permits contain requirements for public education outreach, pollution prevention, sediment controls for construction areas, and low impact development; all of these elements can also help reduce mercury in storm water." ⁹			
Footnote 9: Section 6.11.1, page 136			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg7, P3	COMMENT	Excerpt: 33	Type: MS4
"Phase I and Phase II MS4s are, on the whole, a smaller source of sediments. The sediment and erosion controls in the current MS4s pennits would fulfill the requirements for mercury." ¹⁰			
Footnote 10: Section 6.11.3, page 138			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg7, P4	COMMENT	Excerpt: 34	Type: MS4
"Phase I and II MS4s already have some existing requirements for public education outreach, pollution prevention, sediment controls for construction areas, and low impact development. Additionally, street sweeping is already required by both Phase I and II MS4s. Street sweeping removes fine dust, which may contain mercury from brake pads or atmospheric deposition and keeps improperly discarded mercury containing items from contaminating storm water. If the required actions are already being conducted by an MS4 those activities would count towards compliance." ¹¹			
Footnote 11: Section 6.11.3, page 139			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg7, P5	COMMENT	Excerpt: 35	Type: MS4
"Therefore, it is anticipated that the reasonably foreseeable methods of compliance are likely already being done by Phase I MS4s and there would be little to no change for Phase I MS4s. Phase II MS4s generally have fewer requirements, so it is estimated that some Phase II MS4s may need to add some of the activities described below." (12)			

Responses to Comments—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 Mercury Provisions.

Footnote 12: Section 7.2.5, page 171			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg7, P6	COMMENT	Excerpt: 36	Type: MS4
Thus, based on the points listed above and the supporting discussion within the Draft Staff Report, it is clear that the Phase I municipal stormwater permits already contain a) robust erosion and sediment controls as a part of the Construction and Land Development programs; b) public education and outreach programs; c) household hazardous waste programs that accept key mercury containing items/materials; and d) additional requirements where mercury TMDLs have been adopted. As a result, it is unclear why Phase I municipal stormwater programs are being held to a different standard than other stormwater dischargers and required to implement the controls listed in JV.D.3.b prior to any assessment as to the sources of identified receiving water impairments.			
Response: Please see Response to Comment CASQA2-17.			
Letter: TheOCPW2 , Pg8, P1	COMMENT	Excerpt: 37	Type: MS4
In addition, it is unclear 1) how the linkage between the mercury concentrations in stormwater discharges from urban areas and the definition of <i>Areas with Elevated Mercury Concentrations</i> (13) was established; and 2) what best management practices (BMPs) would be required. Although the Draft Staff Report states that "for areas that are specifically designated as Areas with Elevated Mercury Concentrations, the Water Boards would be required to include best management practices for erosion control in MS4 permits", the reality is that Phase I and Phase II permits may not cover all of the areas where there are elevated mercury concentrations and that, where there is coverage, the Phase I and Phase II permits already include requirements for erosion and sediment controls as a part of their construction programs. Therefore, it is unclear what additional controls are contemplated. Since discharges from urban areas are not a primary source of mercury and the municipal stormwater permits already include erosion and sediment controls, it is recommended that this provision be deleted.			
Footnote 13: AREAS WITH ELEVATED MERCURY CONCENTRATIONS: includes the following areas:			
<ol style="list-style-type: none"> 1) Areas located in the Coast Range mountains with naturally mercury-enriched soil or sediments with total mercury concentrations of 1 mg/kg or higher; 2) Areas located in an industrial area with soil or sediments with total mercury concentrations of 1 mg/kg or higher; 3) Areas located within historic mercury, silver, or gold mine tailings; 4) Areas located within historic hydraulic gold mining pits in the Sierra Nevada mountain range. 5) Any other area(s) determined by the PERMITTING AUTHORITY in the applicable order 			
Response: Please see Response to Comment CASQA2-18.			
Letter: TheOCPW2 , Pg8, P2	COMMENT	Excerpt: 38	Type: MS4

<p>Lastly, Appendix A should be modified to identify a compliance pathway for the discharge prohibitions and receiving water limitations for municipal stormwater pennittees who are implementing the mercury pollution prevention and pollution control measures.</p>			
<p>Response: Please see Response to Comment CASQA2-20.</p>			
Letter: TheOCPW2 , Pg8, P3	COMMENT	Excerpt: 39	Type: MS4s/Language Recommendation
<p>The County requests:</p> <p>The language in Appendix A, Section IV.D.3.a be modified as follows:</p> <p><i>Chapter IVD.3 applies to storm water dischargers regulated under general and individual NPDES STORM WATER permits issued pursuant to Clean Water Act section 402, subsection (p) <u>that have been found to cause or contribute to persistent exceedances of water quality standards or when a mercury TMDL is being developed and the municipal stormwater dischargers are a significant source.</u> The PERMITTING AUTHORITY shall consider include the requirements in Chapter IVD.3.b in individual and general NPDES STORM WATER permits when adopting or re-issuing the permits.</i></p>			
<p>Response: Please see Response to Comment CASQA2-21.</p>			
Letter: TheOCPW2 , Pg8, P4	COMMENT	Excerpt: 40	Type: MS4s/Language Recommendation
<p>The language in Appendix A, Section IV.D.3.b.l be modified as follows:</p> <p><i>Phase I and Phase II MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) permits shall include <u>one or more</u> a combination of the following mercury pollution prevention and pollution control measures to reduce total mercury or methylmercury discharges <u>where the stormwater discharges have been found to cause or contribute to persistent exceedances of water quality standards or when a mercury TMDL is being developed and the municipal stormwater dischargers are a significant source.</u>: All of the following control measures are required, except, at the discretion of the PERMITTING AUTHORITY, additional measure(s) may be substituted for one or more measures if the substituted measure(s) would provide an equivalent level of control or prevent total mercury or methylmercury pollution. . If the PERMITTING AUTHORITY substitutes other measures, the justification shall be documented in the permit fact sheet or equivalent document. The effort involved in each of the required measures shall be proportional to the size and population of the MS4.</i></p>			
<p>Response: Please see Response to Comment CASQA2-22.</p>			
Letter: TheOCPW2 , Pg9, P1	COMMENT	Excerpt: 41	Type: MS4s/Language Recommendation
<p>Delete the language in Appendix A, Section IV.D.3.b.2 as follows:</p> <p>2) The PERMITTING AUTHORITY may include best management practices to control erosion in MS4 permits. However, the ,MS4</p>			

<i>permit shall contain best management practices for AREAS WITH ELEVATED MERCURY CONCENTRATIONS.</i>			
Response: Please see Responses to Comments CASQA2-18 and 19.			
Letter: TheOCPW2 , Pg9, P2	COMMENT	Excerpt: 42	Type: MS4s/Language Recommendation
Add the following language in Appendix A, Section IV.D.3.b.2 (new section) as follows:			
<i><u>2) Compliance Determination. MS4 permittees in full compliance with the implementation of the mercury pollution prevention and pollution control measures are deemed to be in compliance with the mercury discharge prohibition and water quality objectives incorporated into the MS4 permit.</u></i>			
Response: State Water Board does not concur. Please see Responses to Comments CASQA2-18 and 19.			
Letter: TheOCPW2 , Pg9, P3	NOT COMMENT	Excerpt: 43	Type: Greet/Ending
Thank you for your consideration of these comments. Please contact Richard Boon at (714) 955-0670 or Jian Peng at (714) 955-0650, with any questions.			
Response: Comment noted.			

CalICWMP1

Author: Lucia McGovern **Title:** Chair of Stakeholders Implementing TMDLs in Calleguas Creek Watershed **Organization(s):** Calleguas Creek Watershed Management Plan

Address: Not Provided **Interest Group:** Various

Date: 2/16/2017

Contact person: Lucia McGovern **Phone:** 805-388-5334 **E-mail:** Not Provided

Letter: CallCWMP1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
<p>The Stakeholders Implementing Total Maximum Daily Loads in the Calleguas Creek Watershed (Stakeholders) appreciate the opportunity to provide comments on the <i>Draft Staff Report, including substitute environmental documentation for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California - Tribal Subsistence Fishing Beneficial Uses and Mercury Provisions</i> (referred to hereinafter as the Draft Staff Report) which was distributed for public review on January 4, 2017. The Stakeholders consist of agricultural, wastewater, and MS4s that are responsible parties to five effective Total Maximum Daily Loads (TMDLs) in the Calleguas Creek Watershed (CCW).</p>			
<p>Response: Comment noted.</p>			
Letter: CalICWMP1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Summary/Intro
<p>The Stakeholders understand that the State Water Resources Control Board (State Water Board) is proposing to establish (a) three new beneficial use definitions pertaining to tribal traditional and cultural use (CUL), tribal subsistence fishing use (T-SUB), and subsistence fishing use (SUB); (b) one narrative and four numeric mercury water quality objectives to protect numerous beneficial uses of water involving human health and aquatic dependent wildlife; and (c) a program of implementation to control mercury discharges. The Stakeholders developed and are currently implementing a metals TMDL which includes mercury within the CCW¹• The Stakeholders have invested significant resources in developing and implementing this TMDL to ensure protection of human health, aquatic life, and wildlife beneficial uses in the watershed. The Stakeholders undertook the responsibility for developing the TMDL to allow incorporation of the extensive local knowledge of the watershed and we take great interest in ensuring the proposed mercury provisions and new beneficial uses allow protection of human health and wildlife based on local information. Herein we provide comments on the Draft Staff Report proposed beneficial uses and mercury provisions as they</p>			

Responses to Comments—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 Mercury Provisions.

relate to the CCW and the existing metals TMDL.			
Footnote 1: <i>Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Metals for the Callegaus Creek, its Tributaries and Mugu Lagoon</i> . Resolution No. R4-2006-012. June 8, 2006			
Response: Comment noted.			
Letter: CalCWMP1 , Pg2, P1	COMMENT	Excerpt: 3	Type: More Time
1. Adjust the process and timeline for adoption of the proposed mercury objectives and beneficial uses to allow more time for public review			
The Stakeholders understand that the State Water Board is proposing to align the adoption of the mercury objectives and beneficial uses with the timeline stipulated within the U.S. EPA Consent Decree ² so that U.S. EPA's obligation to establish the mercury water quality criteria for aquatic life and aquatic-dependent wildlife would also be satisfied by the June 30, 2017 deadline. However, the beneficial uses and human health mercury water quality objectives were not included in the Consent Decree language and therefore there is nothing preventing the State Water Board from bifurcating those components of the Draft Staff Report to allow time for a robust public review process. As the schedule now stands, affected parties are allowed only 30 days and one <i>public hearing</i> to review and comment on the Draft Staff Report, a 700+ page document.			
Footnote: <i>Our Children's Earth Foundation and Ecological Rights Foundations vs. U.S. EPA</i> , No. 3:13-cv-2857-JSW (2014).			
Response: Please see Response to Comment WSPA2-18.			
Letter: CalCWMP1 , Pg2, P2	COMMENT	Excerpt: 4	Type: More Time
Considering the broad scope of the proposed action, including the adoption of multiple mercury numeric and narrative water quality objectives, the creation of new beneficial uses, the interplay with in-stream flow requirements (which was the subject of a February 1st workshop), and the actions within the implementation plan, the Stakeholders encourage the State Water Board to work with U.S. EPA to either:			
<ol style="list-style-type: none"> 1. Allow an extension of the time for the U.S. EPA Consent Decree and additional steps to the public process for this rulemaking; or 2. Bifurcate the U.S. EPA obligation to develop water quality criteria for wildlife (the proposed prey fish and California least tern prey fish objectives) by June 30, 2017, from the remaining portion of the proposal and add additional time and steps to the public process for the remaining portions of this rulemaking. 			
Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: CalCWMP1 , Pg2, P3	COMMENT	Excerpt: 5	Type: Request: More Time
This alteration of the schedule will allow the Stakeholders and other affected groups to fully consider the effects of the proposed actions while still complying with the schedule outlined in the U.S. EPA Consent Decree.			

Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: CalCWMP1 , Pg2, P5	COMMENT	Excerpt: 6	Type: Request: More Time/Schedule
Requested Action: Pursue Option 1 or 2 above and amend the schedule as follows:			
<ul style="list-style-type: none"> Extend the public comment period by 60 additional days to mid-April 2017; Postpone the State Water Board's first hearing on this issue until May 2017; Provide additional opportunity for the submission of written public comments on any revisions; and Hold a final hearing for consideration of adoption fall 2017. 			
<ul style="list-style-type: none"> Response: See Response to Comment WSPA2-2. 			
Letter: CalCWMP1 , Pg3, P1	COMMENT	Excerpt: 7	Type: TMDL/Mistake
2. Clarify the description of CCW TMDL to demonstrate reevaluation is not necessary			
<p>The Stakeholders understand that the proposed mercury objectives are meant to protect wildlife and human health in areas that are not already protected by an existing TMDL as stated <i>"the implementation requirements in the Provisions do not supersede the mercury TMDLs and their programs of implementation because the site-specific water quality objectives are essentially the same as those in the Provisions "</i> (3)</p> <ul style="list-style-type: none"> The Draft Staff Report goes on to state that <i>"the implementation actions required by the Provision would not apply to dischargers that discharge to receiving waters for which a mercury or methylmercury TMDL has been adopted and the Provisions would not supersede any part of such TMDL (4) "</i>. Such TMDLs including CCW are listed in Table 3-3 of the Draft Staff Report. We agree with the State Water Board that existing TMDLs that include wildlife targets should already be protective of the water bodies and therefore should not be affected by the proposed mercury provisions. However, the CCW TMDL is later noted to be an exception and should be considered for reevaluation because <i>"Calleguas Creek TMDL . has effluent limitations/or point source discharges that are based on the California Toxics Rule criteria (5)"</i> and to adjust the human health fish tissue target to <i>"make the targets more consistent statewide,, by using a higher fish consumption rate.</i> In addition, there are several incorrect statements made about the CCW TMDL, including that <i>"the Calleguas Creek/Mugu Lagoon TMDL ... does not include a quantitative source analysis. 6"</i> <p>Footnote 3: P. 34 Draft Staff Report Footnote 4: P. 37 Draft Staff Report Footnote 5: PP. 39-40 Draft Staff Report Footnote 6: Appendix N, P. N-14 Draft Staff Report</p>			
Response: The Provisions has been modified. Please see Responses to Comments WSPA2-54 and 61.			

Letter: CalCWMP1 , Pg3, P3	COMMENT	Excerpt: 8	Type: TMDL
<p>The Stakeholders would like to clarify the misrepresentation of the CCW TMDL and disagree with the need to reevaluate the TMDL based on the draft provisions. The CCW Metals TMDL was developed utilizing a HSPF model based on a dataset that included data from receiving water monitoring locations throughout the watershed as well as wastewater, urban, and agricultural dischargers. The model was utilized to develop a quantitative source analysis and develop TMDL allocations. The analysis described in the CCW Metals TMDL Technical Report⁷ demonstrates that point source discharge effluent limitations are based on an extensive technical analysis designed to ensure that all TMDL targets would be met, including the fish tissue and bird egg targets designed to protect wildlife. The allocation process ensured that the most stringent target was achieved, which meant, in some cases, that the allocations were based on the CTR criteria because they were more stringent than the other targets. (See Attachment A, p. 157 for a full description of the allocation process). While the Draft Staff Report is correct that the CTR criteria were applied to some point source dischargers it is unclear why this warrants reconsideration when the CTR criteria were chosen based on a detailed source assessment and load allocation analysis.</p> <p>Footnote 7: <i>Calleguas Creek Watershed Metals and Selenium TMDL</i>. Draft Final Technical Report. March 29, 2006, http://tinyurl.com/zdnodsk [CCW Technical Report]</p> <p>Response: Please see Responses to Comments WSPA2-54 and 61.</p>			
Letter: CalCWMP1 , Pg4, P1	COMMENT	Excerpt: 9	Type: TMDL
<p>Furthermore, an assessment of mercury loads spanning from 1993 to 2003 found that publicly owned treatment works (POTWs) represented only 2% of the estimated total mercury loading based on land use⁸ • The modeled waste load allocations values for POTW and other point source dischargers were found to be <i>negligible under most circumstances</i>⁹. Therefore, utilizing resources to reevaluate a TMDL to modify allocations for insignificant discharges is unwarranted.</p> <p>Footnote 8: Table 53, p. 95 of the Technical Report Footnote 9: P. 162 CCW Technical Report</p> <p>Response: Please see Response to Comment WSPA2-29.</p>			
Letter: CalCWMP1 , Pg4, P2	COMMENT	Excerpt: 10	Type: TMDL
<p>Finally, no evidence is provided in the Draft Staff Report to demonstrate that the fish consumption rate assumed in CCW is too low. Additionally, the Draft Staff Report notes that modifying the consumption rate would not modify the implementation provisions or allocations in the TMDL. Modifying a TMDL developed based on extensive local information is not warranted to provide "statewide consistency."</p> <p>Response: Comment noted. There is no requirement in the Provisions to reopen an existing TMDL. The Provisions has been modified to include a discussion on when a new TMDL may be warranted. Please see Responses to Comments WSPA2-54 and 61. Finally, the Provisions encourages</p>			

the sue of site-specific data in setting fish tissue objectives and in addition to no superseding any existing TMDLs the Provisions do not supersede any existing site-specific objectives.			
Letter: CalCWMP1 , Pg4, P3	COMMENT	Excerpt: 11	Type: TMDL
Given the extensive analysis and significant resources invested by the Stakeholders in the TMDL and a lack of evidence that modifying the TMDL would offer further protection of beneficial uses, nothing in the new provisions should necessitate a reevaluation of CCW waste load allocations as the TMDL is already <i>"expected to achieve an appropriate level of protection for humans and wildlife⁴"</i> and <i>"the site-specific water quality objectives are essentially the same as those in the Provisions³"</i> .			
Response: Please see Responses to Comments WSPA2-29, 54 and 61.			
Letter: CalCWMP1 , Pg4, P4	COMMENT	Excerpt: 12	Type: TMDL
Requested Action:			
<ul style="list-style-type: none"> Remove the first paragraph under Table 3-3 on page 39 discussing the Calleguas Creek TMDL or at a minimum the last two sentences of the paragraph that discuss the reevaluation. Remove the last two sentences of the second paragraph on page 40 discussing the potential revisiting of the CCW TMDL fish consumption rate. Remove the following sentence from Appendix N, page N-14 in the first paragraph under section N.2.1: <i>"Of those three TMDLs, the Calleguas Creek/Mugu Lagoon TMDL (Los Angeles Water Board 2006) does not include a quantitative source analysis."</i> 			
Response: No changes were made to the Staff Report. The information in the Staff Report was derived from the documentation available to staff. The Staff Report identifies a few instances where a TMDL may need to be revisited. There is no requirement in the Provisions themselves that TMDLs be revised. In addition, the Provisions has been clarified regarding relying upon existing TMDLs. Please see Responses to Comments WSPA2-54 and 61.			
Letter: CalCWMP1 , Pg4, P5	COMMENT	Excerpt: 13	Type: TMDL
3. Clarify application of implementation provisions when a TMDL exists			
The Stakeholders request clarification regarding the implementation of the proposed mercury provision to <i>upstream water bodies</i> of an existing TMDL. Per the Draft Staff Report mercury implementation provisions do not apply to waters for which a mercury TMDL is established. However, the implementation provisions will apply to receiving waters upstream of a TMDL area <i>"even if the TMDL contains waste load allocation for the dischargers to the upstream water bodies to be implemented as effluent limitations to achieve the downstream water quality standard¹⁰"</i>			
Footnote 10: P. A-8 Draft Staff Report			

Response: The Provisions has been modified. Please see Responses to Comments WSAP2-54 and 61.			
Letter: CalICWMP1 , Pg5, P1	COMMENT	Excerpt: 14	Type: TMDL
<p>The Stakeholders feel the discussion on upstream water bodies needs to be clarified. In the CCW TMDL, all waterbody reaches were evaluated, regardless of 303(d) listing status, and allocations were assigned based on where impairments were identified. In some reaches, the assessment resulted in a finding that impairments did not exist and allocations were only developed if necessary to protect downstream waterbodies. However, targets were assigned to all reaches in the CCW TMDL. In other TMDLs, the assessment was only conducted for a downstream reach and included waste load allocation to upstream receiving waters. In cases like the CCW TMDL where the upstream waters were thoroughly assessed, assigned targets, and found not to be in exceedance for mercury, the proposed mercury provisions should not apply. As it is currently defined in the Draft Staff Report, it is unclear if these waters would fall under the definition of the Draft Staff Report of <i>upstream water bodies</i> for which the proposed mercury provisions implementation requirements would apply.</p>			
Response: The Provisions apply to situations where upstream waters are assigned allocation only for the purposes of attaining downstream water quality and where such analysis as the commenter describes of protecting upstream beneficial uses was not developed.			
Letter: CalICWMP1 , Pg5, P2	COMMENT	Excerpt: 15	Type: TMDL
<p>Requested Action:</p> <ul style="list-style-type: none"> Clarify language discussing <i>upstream water bodies</i> in the Draft Staff Report and Appendix A (pp. 38 and A-8). Specifically modify footnote 17 on page A-8 as follows: <i>"Such "receiving waters" are defined as those that have been assessed as part of an approved mercury or methylmercury TMDL, including those for which impairments were not found in the analysis. I/the TMDL includes allocations/or upstream dischargers to waterbodies not assessed in the TMDL, the implementation provisions may apply if necessary to protect the waterbody to which the discharge occurs."</i> 			
Response: The Provisions has been revised to further clarify relying upon existing TMDLs and the footnote has been removed.			
Letter: CalICWMP1 , Pg5, P3	COMMENT	Excerpt: 16	Type: Areas with elevated Mercury
<p>4. Clarify State Water Board ability to designate Elevated Mercury Areas</p> <p>The Draft Staff Report includes a definition for an area with elevated mercury concentrations that drives required actions for municipal stormwater and agricultural dischargers. The definition includes five different categories (pp. A-15 and B-5). The first two definitions include threshold levels of mercury in the sediment and the second two categories are focused on identified high mercury sources. However, the fifth definition states <i>"Any other area(s) as determined by the Water Boards in the applicable order"</i>. While we agree that there may be other localized areas that the Water Boards may need to designate to address mercury, the designation should be subject to the same thresholds of mercury as the first two definitions.</p>			

Response: The final clause of the definition is intended to allow the water boards to determine, on a site-specific basis, areas that should be considered areas with elevated mercury. The basis of such a finding would need to be documented in the order which makes the finding. Please see Response to Comment CallCWMP1-17.			
Letter: CallCWMP1 , Pg6, P1	COMMENT	Excerpt: 17	Type: Areas with elevated Mercury
Requested Action:			
<ul style="list-style-type: none"> • Include a threshold concentration of 1mg/kg or higher in the definition on page A-15: "5) Any other area(s) with a total mercury concentration of 1mg/kg or higher as determined by the PERMITTING AUTHORITY in the applicable order" • Include a threshold concentration of 1mg/kg or higher in the definition on page B-5: "5) Any other area(s) with a total mercury concentration of 1mg/kg or higher as determined by the Water Boards in the applicable order" 			
Response: Thank you for your suggestion. The definition has been revised to require documentation of the basis for determining other areas with elevated mercury.			
Letter: CallCWMP1 , Pg6, P2	COMMENT	Excerpt: 18	Type: Attainability/Objectives
5. Include more definition and guidance on the application of the new beneficial uses			
<p>The proposed amendments to the Inland Surface Waters Plan and the Draft Staff Report do not provide sufficient direction on the process for designating waterbodies with the new beneficial uses, the data and information needs necessary to make the designations, or guidance on the scope of water quality objectives that could be applied to protect the beneficial uses. While the Stakeholders support and understand the need to create these beneficial uses, we feel it is critical that the definitions and process for designating the uses be clear and that a clear linkage be made between the beneficial uses and the water quality objectives assigned to protect the beneficial uses. We also feel it is important that an evaluation of beneficial uses and the associated water quality objectives be done in consideration of all factors in California Water Code (Wat. Code) § 13241, including "(c)the consideration of water quality conditions that could be reasonably attained through coordinated control of all factors affecting water quality". For example, the Tribal Tradition and Culture Use (CUL) are "uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials."¹¹ Considering that many of California's waterbodies have been highly modified over the years, the Stakeholders struggle to see how this beneficial use could be protected, maintained, or attained in many circumstances.</p>			
Footnote 11: P. 6 Draft Staff Report			
Response: Please see Responses to Comments WSPA2-8, 34, and CVCWA1-36.			

Letter: CalCWMP1 , Pg6, P3	COMMENT	Excerpt: 19	Type: Attainability/Objectives
<p>To address these concerns, the Stakeholders request that the proposed amendments include a process for designating the beneficial uses that lists the multiple factors to be considered and the minimum data and information needed to make the designation. The process should include the requirement to conduct a Use Attainability Analysis (UAA) as described in 40 C.F.R., 131. IO(g). A UAA is required when a state designates uses that do not include the uses specified in section 101(a)(2) of the Clean Water Act (CWA), typically called fishable and swimmable beneficial uses. None of the three new designated uses would fall under this designation and therefore a UAA should be required prior to making the designations. In addition, the Stakeholders suggest formalizing the process for gathering input from the California Native American Tribes to better support their involvement in the designation process. The Stakeholders request that the State Water Board include a two-step designation process for the CUL and T-SUB beneficial uses.</p>			
<p>Response: Please see Responses to Comments WSPA2-8, 34, and CVCWA1-36. See Responses to Comments CVCWA1-7 and 37.</p>			
Letter: CalCWMP1 , Pg6, P4	COMMENT	Excerpt: 20	Type: Attainability
<p>The process would involve:</p> <ol style="list-style-type: none"> 1. California Native American Tribes identifying the types of activities which would qualify a water body for a CUL or T-SUB designation and proposing a process for evaluating waterbodies for those uses. The types of activities and process would then be made available for public comment and input and approved by the applicable Water Board. 2. Once the activities and processes have been approved, the applicable Water Board would utilize the approved input from the California Native American Tribes to select waterbodies to consider for designation and then conduct a UAA to determine which waterbodies to designate with the new uses. 			
<p>Response: See Responses to Comments CVCWA1-7 and 37.</p>			
Letter: CalCWMP1 , Pg7, P1	NOT COMMENT	Excerpt: 21	Type: Attainability
<p>This process would maximize the involvement of the tribes while also supporting a standardized definition and implementation of the new tribal beneficial uses.</p>			
<p>Response: Comment noted.</p>			
Letter: CalCWMP1 , Pg7, P2	COMMENT	Excerpt: 22	Type: attainability/CEQA
<p>The Stakeholders also request consideration of clarifying the definitions of the beneficial uses consistent with the definition of "Tribal cultural resources" included in CEQA Assembly Bill no. 52 (Gatto, 2014) passed on September 25, 2014. While the CEQA definition may not be fully applicable to beneficial use designations, the definition is much clearer and can be more directly linked to specific locations where protection is</p>			

necessary.¹² As part of the clarification of the beneficial use definition, the Stakeholders also request a consistency change to the CUL beneficial use definition. Appendix A of the Draft Staff Report outlines the definitions of the three newly proposed beneficial uses and clarifies that the function of T-SUB and SUB beneficial uses *"is not to protect or enhance fish populations or aquatic habitats¹³"* since these uses would be protected under other designations. The Stakeholders appreciate this clarification and request that this language should also include the CUL beneficial use as the same rationale applies to the CUL beneficial use as to the T-SUB and SUB beneficial uses.

Footnote 12: AB 52 Definition of Tribal cultural resources is as follows:

A Tribal Cultural Resource is (PRC 21074):

- A site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe
- AND is either: On or eligible for the CA Historic Register or a local historic register
- OR the lead agency, at its discretion, chooses to treat the resource as a tribal cultural resource

Footnote 13: P. A-3 Draft Staff Report

Response: Regarding the commenters suggestion to use the definition of tribal cultural resources included in AB 52, we appreciate the commenter bringing the definition of “tribal cultural resources” in PRC 21074 to our attention. However, the Tribal Tradition and Culture beneficial use looks at the uses of water associated with tribal cultural and traditional practices and does not broadly extend to sites with cultural value, history, or resources. Regarding the suggested change to Chapter II. of the Provisions to clarify that the purpose of the Tribal Tradition and Culture beneficial use “is not to protect or enhance fish populations or aquatic habitat.” This change has been made to the Provisions at Chapter II.

Letter: CalICWMP1 , Pg7, P3	COMMENT	Excerpt: 23	Type: BU/Guidance
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Requested Actions:

- Revise the proposed Inland Surface Waters Plan language and the Draft Staff Report to identify minimum data and information requirements and the multiple factors that Water Boards need to consider prior to designating a waterbody with any of the newly proposed beneficial use designations.
- Include a description of the two-step process for defining Tribal (CUL and T-SUB) beneficial uses as described above, including a requirement to conduct a UAA as part of the designation process.
- Consider clarifying the Tribal Tradition and Culture (CUL) beneficial use consistent with CEQA AB52 definition of *Tribal Cultural Resource* as described above.
- Change the language in Appendix A page A-3 to read as follows: "The function of the Tribal Subsistence Fishing, Subsistence Fishing, *and Tribal Tradition and Culture* beneficial uses is not to protect or enhance fish populations or aquatic habitats."

Response: Regarding bullet four, the Provisions have been so revised (Chapter II).

Regarding See Responses to Comments CVCWA1-7 and 37 and ACWA1-128.

Letter: CalCWMP1 , Pg8, P1	NOT COMMENT	Excerpt: 24	Type: Greet/Ending
The Stakeholders appreciate the opportunity to comment on the Draft Staff Report and look forward to continuing to work with the State Water Board on developing the new beneficial uses and mercury objectives. Thank you for your time and consideration of these comments. If you have questions, please contact me at (805) 388-5334.			
Response: Comment noted.			

VID1**Author:** Eldon Boone **Title:** General Manager **Organization(s):** Vista Irrigation District**Address:** 1391 Engineer Street, Vista, CA 92081-8840 **Interest Group:** Irrigation District**Date:** 2/17/2017**Contact person:** Eldon Boone **Phone:** 760-597-3100 **E-mail:** [Click here to enter text.](#)

Letter: VID1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Thank you for the opportunity to comment on the State Water Resources Control Board ("Board") Draft Staff Report, including the Substitute Environmental Documentation for Part2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California - Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions, issued on January 3,2017 ("Staff Report"), regarding the Board's regulatory initiative to regulate mercury levels in California water-bodies (hereinafter "Mercury Policy").			
Response: Comment noted.			
Letter: VID1, Pg1, P2	COMMENT	Excerpt: 2	Type: Greet/Ending
Vista Irrigation District (VID) writes to ask that the Board review and consider the attached comment letter and recommendation table (collectively "Letter") prepared by the San Diego County Water Authority ("SDCWA") on the Staff Report and Mercury Policy. The Letter incorporates input provided by VID and other SDCWA member agencies. VID requests that the Board make the revisions and clarifications requested in the Letter, which is attached hereto. VID hereby incorporates by reference into this comment letter, and asserts as if separately stated herein, all of the contents of the attached SDWA Letter.			
Response: See Responses to Comment letter SDCWA1.			

EMManning1

Author: Elisabeth Middleton Manning **Title:** Associate Professor and Graduate Adviser **Organization(s):** Yocha Dehe Endowed Chair in California Indian Studies, Department of Native American Studies, UC Davis

Address: Not Provided **Interest Group:** Individual

Date: 2/16/2017

Contact person: Elisabeth Middleton Manning **Phone:** 530-752-3237 **E-mail:** Not Provided

Letter: EMManning1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
<p>I write in full support of the proposed beneficial use designations: Tribal Traditional and Cultural Use; Tribal Subsistence Fishing Use; and Subsistence Fishing Use. I am an Associate Professor of Native American Studies at UC Davis with a focus on examining and improving environmental policies and planning to protect and advance tribal interests. While I will focus this letter on the importance of the Tribal Traditional and Cultural Use and the Tribal Subsistence Fishing Use designations, I will also note that I am personally impacted by the Subsistence Fishing Use designation, as I grew up eating fish regularly out of local waterways, with no information made available to my family as to the levels of contamination in those fisheries.</p>			
<p>Response: Thank you for your support.</p>			
Letter: EMManning1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Tribal Beneficial Uses
<p>The Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations are long overdue. Tribal members’ relationship to fisheries throughout California, and tribal members’ level of consumption of fish from California waterways are not accounted for in current beneficial use designations and associated water quality standards. The current beneficial uses and standards assume a qualitatively and quantitatively lower level of use and subsistence than that practiced by many California tribal members. The current beneficial uses are effectively <i>sickening</i> tribal members by disregarding their extensive use of fish and other aquatic flora and fauna. Beneficial use designations must protect all Californians; most significantly first Californians, who have been stewarding these resources and waterways since time immemorial.</p>			
<p>Response: Comment noted.</p>			

Letter: EMManning1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Adopt Beneficial Uses
<p>I encourage the Board to adopt the proposed beneficial use designations, and to apply them immediately throughout the state. The 2014 California Tribes Fish-Use study by Shilling et al. looks at tribal members' current suppressed rate of consumption, which is approximately half of the traditional rate of consumption. The study included surveys with 23 tribes in the state, who use approximately 25% of waterbodies in the state. This indicates that, if all tribes participated in the study, their uses of fisheries would involve all waterbodies throughout the state. As such, all waterbodies should be subject to Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. I also feel strongly that polluters, or those discharging wastewater into waterways, should have to prove that they are not negatively impacting the Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations, rather than tribes having to prove that these beneficial uses apply to the waterways in question. Tribal environmental departments are already often stretched thin, and setting up another process in which tribes have to prove cultural importance of a waterway or aquatic species would place another onerous and undue burden on tribes.</p>			
<p>Response: We appreciate your support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.</p>			
Letter: EMManning1 , Pg2, P1	COMMENT	Excerpt: 4	Type: Tribal Beneficial Uses
<p>I also call on the Board and associated agencies to commit to strongly protect these significant and much-needed beneficial use designations once they are approved. It is within your authority, for example, to designate flow regimes that protect the Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. Please use that authority to protect the tribal rights that have been disrespected for so long.</p>			
<p>Response: Comment noted.</p>			
Letter: EMManning1 , Pg2, P2	NOT COMMENT	Excerpt: 5	Type: Support
<p>In sum, I applaud the State Water Resources Control Board for considering adopting the proposed Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. These designations could not be more necessary. Tribal traditional stewardship of and interdependence with the species that live in local waterways has been constant in California since time immemorial. It is time that regulations recognize, respect, and protect the oldest beneficial uses of water in the state.</p>			
<p>Response: Comment noted.</p>			

WWalker1**Author:** William J Walker PhD **Title:** Senior GeoChemist **Organization(s):** Not Provided**Address:** Not Provided **Interest Group:** Individual**Date:** 2/17/2017**Contact person:** William J Walker **Phone:** Not Provided **E-mail:** Not Provided

Letter: WWalker1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self description
<p>Below are several comments to the proposed Mercury provision. Please consider that I do not claim to understand the content of all the appendices provided or the nuances involved in the translator concepts employed. Rather my comments are based more on past experience collecting, analyzing and interpreting mercury in water column data for the better part of 10 years in and around reclaimed and active mining ponds in the Marysville area. I apologize in advance if some of the issues in the comments have already been addressed or are tangential to the provision.</p>			
Response: Comment noted.			
Letter: WWalker1, Pg1, P2	COMMENT	Excerpt: 2	Type: Attainability
<p>1. Has the practicality of the provision been considered sufficiently? I think it is commonly accepted that numeric standards for water column data can become unworkable if they arise from chemicals that occur at very low concentrations, have low water solubility and are further complicated by bioaccumulation. I would very much like to see the comments from the analytical laboratories that typically contract this work.</p>			
Response: Please see Response to Comment WSPA2-54. Mercury monitoring is currently being conducted in California and there are several EPA approved methods that are sufficient to monitor at the levels that the provisions would require See appendix P.2.3 for a discussion of laboratory monitoring costs			
Letter: WWalker1, Pg1, P3	COMMENT	Excerpt: 3	Type: Laboratory Methods
<p>2. It seems that the errors associated with the statistical analysis, translator application and the inherent laboratory error associated with the proposed standards could be considerable. The provision will probably require a re-evaluation of “clean hands – dirty hands” sampling as well as significant changes to laboratory QA/QC. While cost is not usually considered greatly in the provision, it is a very real consideration (see below).</p>			

Response: Comment noted. Please see Response to Comment ACWA1-111.			
Letter: WWalker1 , Pg1, P4	COMMENT	Excerpt: 4	Type: Mercury Analysis Method
<p>3. Mercury Analysis Method - The Draft Provisions require that "the discharger shall use any U.S. EPA-approved method that has a quantitation limit lower than 0.5 ng/L for total mercury" (page A-11). However, no current U.S. EPA-approved method has a quantitation limit lower than 0.5 ng/L. U.S. EPA Method 1631 Revision E (Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry) requires in Section 1.5 that "The minimum level of quantitation (ML) has been established as 0.5 ng/L". The quantitation limit itself is equal to (not lower than) 0.5 ng/L, meaning that analytical results will be reported as less than this limit. In order to make compliance possible, the draft provision should therefore be altered to require a "quantitation limit equal to or lower than 0.5 ng/L for total mercury." A similar distinction should be made for the 0.06 ng/L methylmercury quantitation limit.</p>			
Response: See response to ACWA_CWA-111			
Letter: WWalker1 , Pg1, P5	COMMENT	Excerpt: 5	Type: Mercury Removal
<p>4. The data interpretation is the most interesting facet of the provision at least based on our past work. Analysis of many data sets from mercury in water column work demonstrated two important trends (1) "soluble" (via physical separation) mercury was quasi consistent in our samples at very low concentrations, (2) total mercury varied widely but was always correlated very strongly to TSS (total suspended solids). Inspection of the solids entrained in the samples typically showed that mercury concentrations at 0.5 mg/kg or less or "background". This illustrates the problem that total mercury in water in excess of the proposed provision could arise from suspended solids of background soil or sediment. Is it prudent then to either consider additional framework to address this or re-consider the use of a numeric total mercury provision?</p>			
Response: The water quality objectives are for methyl mercury in fish tissue. Due to the noted complexity of conversion of mercury to methyl mercury in the environment the provisions require only measurement of total mercury since it may be converted to methyl mercury.			

Shilling1

Author: Fraser Shilling, PhD **Title:** Dr. **Organization(s):** UC Davis

Address: One Shields Avenue, Davis, CA 95616-8576 **Interest Group:** Individual

Date: 2/17/2017

Contact person: Fraser Shilling **Phone:** 530-752-7859 **E-mail:** fmshilling@ucdavis.edu

Letter: Shilling1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self description
I am writing this letter as the author and lead of two studies relevant to the proposed action on Tribal Tradition Culture (CUL), Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) Beneficial Uses and Mercury Objectives. I have carried out two large survey-based studies of subsistence and tribe fishing and fish-use in California, both of which are referenced in the documentation for the proposed action and both of which are attached here. I also co-developed (with CDPH, RB, OEHHA, and others) the questionnaire and survey approach currently used throughout CA. I have carried out special studies of fishing, fish consumption, and threats to anglers from mercury in fish for CDPH, RB-5, and Sacramento County Regional Sanitation District. Finally, I have taught a core graduate class in survey protocols for the Human and Community Development program.			
Response: Thank you for your hard work. Comment noted.			
Letter: Shilling1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: General Support
I would like to support the 3 Beneficial Use actions proposed with several caveats and conditions:			
Response: Comment noted.			
Letter: Shilling1, Pg1, P3	COMMENT	Excerpt: 3	Type: Tribal Fish Consumption
1. Traditional fish use has been suppressed so that contemporary use of 1 7-8 oz fish meal every 4-5 days is at least ½ to 1/3 of the traditional rates reported to me by elders in the tribes and as reported in the literature cited in the attached report on tribes' fish-use. The quantification of fish use is an appropriate part of establishing the beneficial use, but the rate used is low compared to rates just 1-2 generations in the past. This means that CA agencies should strive to use the higher traditional subsistence rates to set fish tissue contaminant standards and implementation actions for all waterways where tribes are maintaining a traditional reliance on fish.			
Response: Comment noted. See response to Shilling1-6			
Letter: Shilling1, Pg1, P4	COMMENT	Excerpt: 4	Type: Tribal Beneficial Uses

Responses to Comments—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 Mercury Provisions.

2. We interviewed members of 40 tribes at the locations of 23 of CA's 146 state and federally recognized tribes (attached report). Tribe members reported use of waterbodies across approximately 25% of California's land surface, with some minor overlap among tribes. This suggests that if all tribes were interviewed, most or all of the state's waterbodies would be used by members of a tribe. It would be appropriate to apply the tribe beneficial uses and associated standards and implementation actions to ALL waterbodies of the state, unless a reasonable finding can be made by dischargers/permittees, or others for non-use by tribes, for example of high-alpine lakes or agricultural canals with few fish. This is instead of putting the onus upon the tribes to prove their use of the waterbodies. A direct analogy relevant to previous SWRCB actions would be if individual recreational coastal water users in Southern California had to prove that they went surfing/swimming at a particular beach in order for the state's pathogenic bacteria standards to apply to that beach. This would be unreasonable and was not carried out for this largely white population. Another analogy from a sister agency would be if community residents adjacent to I-710 in Long Beach and Los Angeles had to prove that they breathed air contaminated by diesel truck exhaust before the Air Resources Board or AQMD would enact standards to protect them.

Response: Comment noted.

Letter: Shilling1, Pg2, P1

COMMENT

Excerpt: 5

Type: BUs

3. There is no good reason given for not providing a quantitative standard, target, or objective to meet the (non-tribal) subsistence (SUB) beneficial use. The rationale provided of there being wide variability in fish consumption also applies to tribal use, recreational use, and US household use of fish. This is an arbitrary basis for not setting a quantitative objective. There have been studies of fish use in the Bay Area (1999), Delta (2007-8), Clear Lake (early 2000s), Sierra Nevada reservoirs (2011), Los Angeles (late 1990s), and San Diego (2017). The 95th% rate across these studies range from 32 g/day from the out-of-date Bay study, to 142 g/day (Delta study, Shilling et al., 2010). The range in rates is almost exactly the same as the range of variation across California tribes. The difference is that the latter were surveyed in the same year, whereas subsistence anglers have been surveyed across the last 16 years. If a narrative definition is used, then it MUST be accompanied by a commitment by the Board to support (fund) surveys across a range of communities that the Board finds sufficient to base a quantitative objective for fish tissue in order to protect this beneficial use. This commitment must be funded at a sufficient level and include a timeline for completion and updating of the beneficial use definition and accompanying water quality objective and fish tissue targets for contaminants.

Response: The use of a narrative objective was supported by the peer reviewers to account for the variability of fish consumption patterns. The narrative includes a translator of 143 g/day that would apply in the absence of site-specific data. See appendix S.

Letter: Shilling1, Pg2, P2

COMMENT

Excerpt: 6

Type: BUs

4. The decision to not apply the beneficial uses in all waterways where they are relevant, regardless of the presence of a TMDL, is arbitrary. This is especially true for the Delta mercury TMDL where Regional Board 5 staff chose to ignore a study (attached) of fish consumption by, primarily, nonwhite communities. This means that the rate should be applied as new information for that TMDL as it is apparently new to the RB staff. In addition, at least two tribes fish in the upper Delta, which means that the 2 tribal beneficial uses should apply there, regardless of the approved TMDL. They can be used as new information to adapt the TMDL to current conditions.

Response: The designation of beneficial uses to specific water boadies is beyond the scope of the project. Specific designations are

appropriately left to the regional water boards.			
Letter: Shilling1, Pg2, P3	COMMENT	Excerpt: 7	Type: BUs
<p>5. The T-SUB beneficial use has been described as not being designed to protect fish or their habitat. In the case of every other beneficial use, the target of the beneficial use is protection of the use of water to meet the physical, biological and/or chemical conditions required to provide or protect the use, within the regulatory capacity of the SWRCB. For example, MUN protects drinking water so that it can be used by people. EST targets protection of water to support estuarine ecosystems, including protection of organisms and their habitat. REC-1 involves setting standards for pathogens and other contaminants that could harm humans when ingested while they recreate. It makes no sense that for the two beneficial uses that protect aquatic habitat and organism use by tribes would not actually be used to protect the actual features – fish and their habitat. This selective use of Board authority to provide limited protections for tribes does not seem to be based in science, legal consideration, or other rationale.</p>			
<p>Response: The board is not using its authority selectively but is pointing out that beneficial uses are designed to protect specific activities. The most appropriate beneficial uses to protect habitat are the habitat uses. In all cases where the new beneficial uses would be designated a habitat beneficial use would also be designated and as such would be the more appropriate beneficial use to use for establishing programs to enhance the habitat.</p>			
Letter: Shilling1, Pg2, P4	COMMENT	Excerpt: 8	Type: Question: Areas with elevated Mercury
<p>6. The implementation plan focuses on municipal and industrial dischargers to provide material reduction in mercury inputs to waterways while side-stepping the much more serious problem of elemental and oxidized mercury inputs from abandoned mines and downstream reservoirs and riparian zones, as well as the methylation environment exacerbated by agricultural discharge. Because no agency in the state is stepping forward to take programmatic responsibility for abandoned mines (including the DOC, which recently stepped back from this role), there is no path forward for reducing this greatest of inputs. The Board’s “deep-pockets” approach toward dischargers unnecessarily limits the regulatory authority and other capacities of the Board and ignores possibly innovative approaches. For example, dischargers have previously discussed off-setting programs as a way to use their funds to reduce much greater amounts of mercury to waterways than they are discharging. If a discharger is faced with a \$10 million retrofit to reduce mercury discharge by 1 kg/year to meet standards, it is entirely possible that a much greater reduction of inputs to the same waterway could be achieved for half the money. It seems possible to create a program where permits to discharge require that dischargers contribute to a pooled fund that reduces mercury inputs to the same waterway (e.g., lower Sacramento River, Napa River, Cache Creek) by at least a 10-fold factor. This program could be designed based on existing and newly-collected information about discharge from abandoned mines and waterways, spatially-explicit decision-support tools, modeled/estimated BAFs, load tracking, and known/anticipated discharge rates from permitted entities. It could be accompanied by compliance monitoring and conditional permits. A process like this could be proposed within the implementation of these objectives and informal discussion with some of the involved parties suggests that it could be supportable assuming certain conditions are met for each of the important stakeholders.</p>			
<p>Response: Comment noted.</p>			
Letter: Shilling2, PgX, P5	NOT COMMENT	Excerpt: 9	Type: Greet/Ending

Please email or call me with any questions.

Response: Comment noted.

DCRPomo1**Author:** Chris Wright **Title:** Tribal Chairman **Organization(s):** Dry Creek Rancheria Band of Pomo Indians**Address:** Not Provided **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** Chris Wright **Phone:** Not Provided **E-mail:** Not Provided

Letter: DCRPomo1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
The Dry Creek Rancheria, Band of Pomo Indians respectfully submits this letter in support of the proposed beneficial use categories pertaining to tribal traditional and cultural use, tribal subsistence fishing, and subsistence fishing by other cultures or individuals. We applaud the effort by the State Water Resources Control Board ("Water Board") and its staff in developing the proposed definitions. We believe that it is never too late, or too soon, to acknowledge tribal traditional cultural use and traditional subsistence fishing through the adoption of the new beneficial use definitions.			
Response: Thank you for your support.			
Letter: DCRPomo1 , Pg1, P2	COMMENT	Excerpt: 2	Type: General Support
We further applaud and support the Board staff in its effort to explain to opposing groups that adoption of the definition does not, in and of itself, change anything substantively. The Regional Water Boards (hereinafter "Boards") carry out their water quality protection authority through, among other actions, the adoption of water quality control plans. Through these plans, the Boards establish water quality standards, which identify beneficial uses, designate specific waters with beneficial uses, establish water quality objectives to protect those uses, and set antidegradation policies for those waters. A water quality standard will be inadequate if all beneficial uses are not properly identified and included in the development of the standard. That is why some water quality control plans already identify traditional tribal cultural use, however there is no statewide definition for what that means.			
Response: Thank you for your support.			
Letter: DCRPomo1 , Pg1, P3	NOT COMMENT	Excerpt: 3	Type: General Support

Responses to Comments—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 Mercury Provisions.

<p>It seems common sense that if people are using water in a specific way, that the Boards would consider those uses when approving water quality standards for a specific water body. Beneficial uses are the baseline of water quality protection. The Porter-Cologne Act provides that the beneficial uses of the state's waters are protected against degradation. However, the current list of beneficial uses still does not include traditional tribal cultural uses or traditional tribal subsistence fishing, two important beneficial uses that continue today, despite the significant amount of historic watershed disruption and degradation.</p>			
<p>Response: Comment noted.</p>			
Letter: DCRPomo1 , Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Description of Reg (clarify language)
<p>It is our understanding that by adopting definitions for the new beneficial use categories, the Water Board is not extending any specific rights to our Tribe, particularly that we are not being guaranteed any quantified water rights, removal of any diversions, or an allocation of a certain number of fish or other species. We understand that these rights would flow from other laws and other legal procedures.</p>			
<p>Response: Comment noted.</p>			
Letter: DCRPomo1 , Pg2, P1	NOT COMMENT	Excerpt: 5	Type: Description of Reg: Regional Board process
<p>We agree that any future designation of the tribal traditional cultural use for a specific water body would take place in the context of a water quality control planning process, with associated supporting information and public participation. This process would include the opportunity to examine whether the designation may subsequently result in instream flow requirements, and the implications of any such flow requirements. We believe that the current procedures for balancing these needs is a public process that is well established.</p>			
<p>Response: Comment noted.</p>			
Letter: DCRPomo1 , Pg2, P2	NOT COMMENT	Excerpt: 6	Type: Statement of Facts
<p>The Dry Creek Rancheria is one of many governmental and regulatory authorities that has authority to regulate waters within its jurisdiction. We take this role very seriously, and we are conscious of the careful balancing that is required to both allow for economic development, but also protect our limited natural resources. We are committed to ensuring that water quality standards are met or exceeded for all tribal projects and under all applicable permits.</p>			
<p>Response: Comment noted.</p>			
Letter: DCRPomo1 , Pg2, P3	NOT COMMENT	Excerpt: 7	Type: Statement of Facts
<p>After years of discussion, we were pleased to see that on February 16, 2016, the Water Board adopted Resolution No. 2016-0011. In accordance with the resolution, Board staff developed the beneficial use categories, and there has been an extensive public process where input could be given. We participated in this process and we believe that the proposal is sound and should be adopted without further delay.</p>			
<p>Response: Comment noted.</p>			

Letter: DCRPomo1 , Pg2, P4	NOT COMMENT	Excerpt: 8	Type: General Support
<p>In closing, we support the current proposal to include new beneficial use definitions for tribal traditional and cultural use, tribal subsistence fishing, and subsistence fishing by other cultures or individuals. We urge the Board to adopt the recommendations from staff and approve the following beneficial use definitions:</p> <p>1) Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.</p> <p>2) Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal needs for sustenance.</p> <p>3) Subsistence Fishing (SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities, to meet minimal needs for sustenance.</p>			
<p>Response: Thank you for your support.</p>			

CWAEtal1**Author:** Rebecca Franklin, Jack Hawks, Danielle Blacet **Title:** Regulatory Advocate, Executive Director, Director for Water**Organization(s):** Association of California Water Agencies, California Water Association & California Municipal Utilities Association**Address:** Not Provided **Interest Group:** INDUSTRY**Date:** 1/20/2017**Contact person:** Rebecca Franklin, Jack Hawks, Danielle Blacet **Phone:** (916)441-4545, (415)561-9650, (916)326-5800**E-mail:** Not Provided

Letter: CWAEtal1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
<p>The Association of California Water Agencies, the California Water Association and the California Municipal Utilities Association thank you for the opportunity to provide comments on the proposed <i>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 Mercury Provisions</i> (Provisions) released for public review on January 3, 2017. We also sincerely appreciated, and in some cases, despite short notice, were able to have representatives attend the Staff Workshop conducted on January 9, 2017 to brief the public regarding the Provisions, information in the Staff Report and Substitute Environmental Documentation (Staff Report) and to address preliminary questions from the regulated community regarding this information. For the reasons discussed below and so that we may provide complete, comprehensive, and informed comments to the State Water Resources Control Board (State Water Board) on the Provisions and the 700-page, and very complex Staff Report, we are requesting that:</p>			
Response: Comment noted.			
Letter: CWAEtal1, Pg1, P2	COMMENT	Excerpt: 2	Type: EPA Automatic Extension
<p>The State Water Board should work with U.S. Environmental Protection Agency EPA to obtain the <i>automatic</i> extension afforded by Section XI.A. of the <i>Consent Decree: Our Children’s Earth Foundation v. U.S. EPA</i>, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (requiring EPA’s promulgation of mercury water quality criteria for the protection of aquatic life)(Consent Decree);</p>			
Response: Please see Response to Comment ACWA-CWA-19.			
Letter: CWAEtal1, Pg1, P3	COMMENT	Excerpt: 3	Type: More time
<p>The State Water Board hearing scheduled for February 7, 2017 should be converted to a second workshop for the Board and staff to consider the Staff Report and answer stakeholder questions, which will allow sufficient time for the public to review the voluminous Staff Report and</p>			

Responses to Comments—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 Mercury Provisions.

pose important questions for staff to answer and the Board to consider; ¹			
Footnote 1: See Excerpt 157 below.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CWAEtal1 , Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Not enough time.
Footnote 1 on page 2: Interested parties and stakeholders had only three working days to review the 700+ page Staff Report in advance of the Jan. 9 workshop, as a partial matter making it impossible to read and digest, must less formulate coherent, informed, and incisive questions.			
Response: Please see Responses to Comments WSPA2-2, and 18.			
Letter: CWAEtal1 , Pg2, P1	COMMENT	Excerpt: 5	Type: More time
A 60-day extension of the written comment due date (from February 17, 2017 to at least April 17, 2017) should be granted to allow full review of, and preparation of informed comments on, the Staff Report by stakeholders and technical experts;			
Response: Please see Responses to Comments WSPA2-2, and 18.			
Letter: CWAEtal1 , Pg2, P2	COMMENT	Excerpt: 6	Type: More time
The State Water Board hearing for consideration of the Provisions should be postponed until May 2017 to assure that the Board has an opportunity to actually consider written as well as verbal comments of the public on the proposed Provisions;			
Response: Please see Responses to Comments WSPA2-2, and 18.			
Letter: CWAEtal1 , Pg2, P3	COMMENT	Excerpt: 7	Type: More time
An additional opportunity for submission of written public comments on any revisions to the proposed Provisions and Staff Report should be provided prior to a final State Water Board hearing to consider adoption of the Provisions; and			
Response: Please see Response to Comment ACWA1-48.			
Letter: CWAEtal1 , Pg2, P4	COMMENT	Excerpt: 8	Type: More time
The State Water Board hearing to consider adoption of the Provisions should be postponed to September 2017 to accommodate an informed, transparent, and robust public process regarding the Proposed Provisions.			
Response: Please see Responses to Comments WSPA2-2, and 18.			
Letter: CWAEtal1 , Pg2, P5	COMMENT	Excerpt: 9	Type: Insufficient Time/Public Review
As you are aware, not only does the Staff Report exceed 700 pages in length, containing 21 technical appendices, it also introduces, develops, explains, analyzes, and evaluates the water quality effects, environmental effects, and economic impacts of a new far-reaching statewide regulatory program, comprised of three new beneficial use designations, five new mercury water quality objectives, and an implementation program. The implementation program includes, among other things, new requirements for MS4 and Industrial stormwater NPDES permits, and an amendment of the State Implementation Plan requiring incorporation of new, very stringent mercury numeric effluent limits into NPDES permits for POTWs and other non-stormwater discharges. These NPDES permit requirements and effluent limits will be enforceable by water boards and third party citizen suits, creating significant risk of enforcement liability for dischargers, but the Staff Report and Provisions do not set			

Responses to Comments—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 Mercury Provisions.

<p>forth a clear path for compliance. Development of each of the components of the Provisions evaluated in the Staff Report involves analysis and application of highly technical data and information sources – a fact readily acknowledged by the State Water Board staff at, and cited as the very reason for holding, the January 9, 2017 workshop. Indeed, in the workshop State Water Board staff noted on several occasions the length of the Staff Report, the complexity of the technical arguments and analysis in the Staff Report, the “jigsaw puzzle” character of the proposed Provisions, and the very short amount of time available to review the Staff Report. In light of these facts, the expedited rulemaking schedule does not provide sufficient opportunity for public participation by interested parties.</p>			
<p>Response: Please see Responses to Comments WSPA2-2, and 18.</p>			
Letter: CWAEtal1 , Pg3, P1	COMMENT	Excerpt: 10	Type: Request: More Time/Schedule
<p>At the January 9 workshop, staff presented the following schedule for State Water Board adoption of the Provisions:</p> <ul style="list-style-type: none"> • Public comment period: January 3 – February 17, 2017 • Public workshop: January 9, 2017 • State Water Board hearing: February 7, 2017 • State Water Board meeting/ considered for adoption May 2017 • Consent Decree deadline for EPA to propose mercury criteria June 30, 2017 			
<p>Response: Please see Responses to Comments WSPA2-2, and 18.</p>			
Letter: CWAEtal1 , Pg3, P2	COMMENT	Excerpt: 11	Type: Request: More Time/Schedule
<p>The schedule is deficient in the following respects: (a) The schedule allows for only one workshop, which was scheduled only 3 working days after release of the 700-page Staff Report, depriving the public of a reasonable period of time to complete preliminary review of the document and formulate questions prior to the workshop; (b) It allows for only one public comment period; there is no opportunity for written comments on revised proposed Provisions after receiving initial public comments, but prior to State Water Board consideration of adoption; (c) A total of only five weeks following the workshop are available to the public to review and prepare written comments on the voluminous, highly technical, and complex Staff Report analysis, which requires multi-discipline technical review (including review by, among others, water quality, toxicology, and economic experts) ; and (d) The schedule includes only one Board hearing, which appears to be insufficient to assure that the State Water Board is apprised of technical, legal and policy issues that the public is likely to raise regarding the Provisions, including the stringency versus the likely effectiveness of proposed implementation program measures and controls.</p>			
<p>Response: Please see Responses to Comments WSPA2-2, and 18.</p>			
Letter: CWAEtal1 , Pg3, P3	COMMENT	Excerpt: 12	Type: Request: More Time/Schedule
<p>We understand that the State Water Board has scheduled the adoption of the proposed Provisions for May 2017 in order to meet the June 30, 2017 deadline for the U.S. Environmental Protection Agency (EPA) to propose or approve the State Water Board’s numeric water quality criteria (objectives) for mercury to protect aquatic life and aquatic-dependent wildlife. <i>See, Consent Decree: Our Children’s Earth Foundation v. U.S. EPA</i>, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (hereinafter, Consent Decree). However, there are at least two other ways for EPA to comply with the Consent Decree without the State Water Board’s adoption of the proposed Provisions in the spring of 2017 according to its current schedule:</p>			

Responses to Comments—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 Mercury Provisions.

Response: Please see Responses to Comments WSPA2-2, and 18.			
Letter: CWAEtal1 , Pg3, P4	COMMENT	Excerpt: 13	Type: Request: More Time/Schedule
EPA can file a motion requesting an extension of the June 30, 2017 date under section XI.A. of the Consent Decree, which provides for one automatic extension where the requested extension period is at least 30 days and the requisite notice provisions are met. <i>See</i> , Consent Decree, ¶ 35.			
Response: Please see Response to Comment ACWA1-19.			
Letter: CWAEtal1 , Pg4, P1	COMMENT	Excerpt: 14	Type: Request: More Time/Schedule
EPA may promulgate aquatic life mercury water quality criteria by June 30, 2017 as contemplated in the Consent Decree. The State Water Board could then follow up that action with adoption of an implementation program for aquatic life criteria and with new human health related mercury water quality objectives, implementation measures, and definitions of proposed beneficial uses after those proposals have been properly vetted in public hearings and commented upon by interested parties.			
Response: Please see Responses to Comments ACWA1-19 and WSPA-2.			
Letter: CWAEtal1 , Pg4, P2	COMMENT	Excerpt: 15	Type: More time
We appreciate that it is the State Water Board’s preference, as indicated by staff at the workshop, to promulgate the mercury water quality objectives, instead of EPA, so that it can develop concurrently a program of implementation. We generally support the State Water Board’s preference, and recognize the potential advantages in designing a comprehensive mercury program versus a piecemealed approach that would require multiple rulemakings. For this reason, we recommend working with EPA to request a minimum 3-month automatic extension of the June 30, 2017 Consent Decree due date, and the adjustments to the schedule for the public rulemaking process set forth above. To show the feasibility of our request to revise the rulemaking schedule to provide a robust and transparent rulemaking process, we provide an alternative conceptual schedule for the process in Attachment A of this letter.			
Attachment: See page 5 of Comment letter: CWAEtal1 (File name: Water Association Comments on Mercury Objectives 01202017)			
Response: Please see Responses to Comments ACWA1-19 and WSPA-2.			
Letter: CWAEtal1 , Pg4, P3	COMMENT	Excerpt: 16	Type: More time
A rulemaking of this magnitude, scope, complexity, and technical nature – not to mention the regulatory implications of the program which will likely extend far beyond regulation of mercury in light of the new beneficial use categories proposed – surely warrants more than five and a half weeks total of public review and comment, and more than a single workshop and Board hearing.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CWAEtal1 , Pg4, P4	NOT COMMENT	Excerpt: 17	Type: Greet/Ending
We appreciate your consideration of this request for an extension of the State Water Board’s comment period and adoption of the proposed Provisions. If you have any questions, please contact Rebecca Franklin at (916) 441-4545, Jack Hawks at (415) 561-9650, or Danielle Blacet at (916) 326-5800.			

Response: Comment noted.

EJCW1**Author:** Randy Reck **Title:** Legal Fellow **Organization(s):** The Environmental Justice Coalition for Water**Address:** PO Box 188911 Sacramento, CA 95818-8911 **Interest Group:** Environmental Justice**Date:** 2/17/2017**Contact person:** Randy Reck **Phone:** (916)432-3529 **E-mail:** info@EJCW.ORG

Letter: EJCW1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Environmental Justice Coalition for Water (EJCW) appreciates the opportunity to comment on the Proposed 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 Mercury Provisions (“Provisions”) and the Draft Staff Report, including the Draft Substitute Environmental Document.			
Response: Comment noted.			
Letter: EJCW1, Pg1, P2	COMMENT	Excerpt: 2	Type: Do Not Split Project/General Support
In brief, we strongly support the adoption of the new beneficial use categories and definitions related to tribal traditional and cultural uses of water, tribal subsistence fishing, and subsistence fishing by the general population. We believe these beneficial use designations are long overdue and therefore urge the Board to preserve the unified adoption of these designations with the statewide mercury water quality control objectives. Statewide recognition of these three new beneficial uses has been a multi-year effort of the Board, Tribes, and other interested stakeholders with numerous public outreach events, workshops, hearings, and stakeholder engagement. Recognizing these beneficial uses together with the proposed mercury objectives is the most logical path, as the two are inextricably linked. We urge the Board not to bifurcate the proceeding, but to proceed as planned from the outset and adopt the new beneficial uses and mercury objectives together.			
Response: We appreciate your support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.			
Letter: EJCW1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: General Support
We also support the Board’s proposed five water quality objectives, as they appear to provide a path towards ensuring reasonable protection of their associated beneficial uses. Additionally, we strongly support the Board’s recognition that additional water quality objectives for pollutants other than mercury may be necessary in the future to reasonably protect the two proposed subsistence beneficial uses (T-SUB and SUB). We			

Responses to Comments—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 Mercury Provisions.

look forward to working with the State Board as well as the Regional Boards to identify and designate specific water bodies that support subsistence fishing and to develop programs of implementation that will ensure the protection of human health on a community and individual scale.			
Response: Thank you, Comment noted.			
Letter: EJCW1 , Pg2, P1	COMMENT	Excerpt: 4	Type: TMDLs
However, we cannot support the proposal in so far as it limits its reach to inland waters not currently covered by a TMDL. Many mercury or methylmercury TMDLs were developed years or decades ago and contain mercury objectives higher than the proposed standard for sport fishing of 0.2 mg/kg in highest trophic level fish. For example, the Sacramento-San Joaquin Delta Methylmercury TMDL sets an objective of 0.24 mg/kg for trophic level 4 fish. Although existing TMDLs were found to be protective of existing beneficial uses at the time they were passed, the current action pending before the Board presents an opportunity to update statewide objectives based on the latest scientific understanding of exposure levels for human and wildlife protection. Further, a consistent statewide standard will minimize disparate impacts to Californian’s based on geographic location. We believe the new water quality objectives should be applied immediately to all inland waters, including areas covered by existing TMDLs. This not only will facilitate meeting the goal of a level of mercury that is protective of fish and limited human consumption, but also ensure statewide consistency. At minimum, it should be made explicit that the new objectives should apply to all future updated mercury TMDLs.			
Response: Please see Response to Comment WSPA2-27.			
Letter: EJCW1 , Pg2, P2	NOT COMMENT	Excerpt: 5	Type: General Support/Ending
We are also pleased to see that the State Board analyzes the Provisions’ impacts in consideration of the Human Right to Water. Though brief in its analysis, we appreciate the included exception for small disadvantaged communities for the municipal wastewater treatment requirements.			
Response: Comment noted.			
Letter: EJCW1 , Pg2, P3	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
Thank you for your consideration.			
Response: Comment noted.			

SerrWD1**Author:** Jeremy Jungreis **Title:** Comment Letter **Organization(s):** Serrano Water District**Address:** 611 Anton Blvd, Suite 1400, Costa Mesa, CA 92626 **Interest Group:** POTW**Date:** 2/17/2017**Contact person:** Jeremy Jungreis **Phone:** 714-338-1882 **E-mail:** jjungreis@rutan.com

Letter: SerrWD1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Thank you for the opportunity to comment on the State Water Resources Control Board (“Board”) Draft Staff Report, including the Substitute Environmental Documentation for 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 Mercury Provisions, issued on January 3, 2017 (“Staff Report”), regarding the Board’s regulatory initiative to regulate mercury levels in California water-bodies (hereinafter “Mercury Policy”).			
Response: Comment noted.			
Letter: SerrWD1 , Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Reference to other letter
I write on behalf of Serrano Water District (“Serrano”) to ask that the Board review and consider the attached comment letter and attachments (collectively “Letter”) submitted jointly by the Association of California Water Agencies, California Water Association and the California Municipal Utilities Association on the Staff Report and Mercury Policy. The Letter incorporates input provided by Serrano and other water districts throughout California. Serrano requests that the Board make the revisions and clarifications requested in the Letter, which is attached here to. Serrano hereby incorporates by reference into this comment letter, and asserts as if separately stated herein, all of the contents of the attached Letter.			
Response: Please see Responses to Letter ACWA1.			

CLADPW1**Author:** Angela R. George **Title:** Assistant Deputy Director **Organization(s):** County of Los Angeles, Department of Public Works**Address:** 900 South Fremont Ave., Alhambra, CA 91803-1331 **Interest Group:** STORM**Date:** 2/16/2017**Contact person:** Angela R. George or Mark Pestrella **Phone:** (626)458-4300 or (626)458-4325 **E-mail:**
ageorge@dpw.lacounty.gov or palva@dpw.lacounty.gov

Letter: CLADPW1, Pg1, P1	NOT COMMENT	Excerpt: 1.	Type: Greet/Ending
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.			
Response: Comment noted.			
Letter: CLADPW1, PgX, PY	NOT COMMENT	Excerpt: 2.	Type: Greet/Ending
If you have any questions, please contact me at (626) 458-4300 or ageorqe@dpw.lacountv.gov or your staff may contact Mr. Paul Alva at (626) 458-4325 or palva@dpw.lacountv.gov.			
Response: Comment noted.			
Letter: CLADPW1, Pg2, P1	COMMENT	Excerpt: 3.	Type: Beneficial Uses and Water Quality Objectives
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			

<p>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.</p>			
<p>Response: In regards to splitting the project, Please see Response to Comment WSAP2-3. In regards to other pollutants, Please see Response to Comment WSPA2-20. In regards to flow, Please see Response to Comment MerCID1-58.</p>			
Letter: CLADPW1 , Pg2, P2	COMMENT	Excerpt: 4.	Type: Split Project
<p>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.</p>			
<p>Response: Please see Response to Comments WSPA2- 3,and ACWA1-19.</p>			
Letter: CLADPW1 , Pg2, P3	COMMENT	Excerpt: 5.	Type: BU/Designation/Guidance
<p>10. Guidance Should be Provided to Facilitate the Proper Designation of the New Beneficial Uses to Waterbodies</p> <p>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.</p>			
<p>Response: Please see Responses to Comments WSPA2-8, 34, CVCWA1-36.</p>			
Letter: CLADPW1 , Pg3, P1	COMMENT	Excerpt: 6.	Type: BU/Designation/Guidance
<p>During the early 1990s when the Basin Plans where 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.</p>			
<p>Response: Comment noted.</p>			
Letter: CLADPW1 , Pg3, P2	COMMENT	Excerpt: 7.	Type: BU/Designation/Guidance
<p>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.</p>			
<p>Response: In regards to guidance, Pleases see Responses to Comments WSPA2-8, 34, CVCWA1-36. In regards to the use attainability analysis, Please see Response to Comment CVCWA1-37.</p>			
Letter: CLADPW1 , Pg3, P3	COMMENT	Excerpt: 8.	Type: Attainability
<p>V. The Attainability of the Newly Proposed Mercury Water Quality Objectives Should be Analyzed</p>			

<p>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/kg~ 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.</p>			
<p>Response: Please see Response to Comment ACWA1-104.</p>			
Letter: CLADPW1 , Pg3, P4	COMMENT	Excerpt: 9.	Type: Attainability
<p>The County and the ~ACFCD 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 occurring levels. This analysis should then also guide the application of any new objectives by the Regional Boards.</p>			
<p>Response: Please see Response to Comment WSPA2-6 and Appendix R.</p>			
Letter: CLADPW1 , Pg4, P1	Choose an item.	Excerpt: 10.	Type: MS4
<p>VI. The Proposed Effluent Limitations for Wastewater and Industrial Discharges Should Not Apply to Municipal Stormwater Discharges</p> <p>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.</p>			
<p>Response: Correct, the numerical effluent limitations are only for the individual non-storm water discharge, and they do not apply to the municipal storm water discharge (see Provision Section IV.D.2.a. and IV.D.3.a.)</p>			
Letter: CLADPW1 , Pg4, P2	COMMENT	Excerpt: 11.	Type: MS4s/Language Recommendation
<p>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.</p>			
<p>Response: Comment noted.</p>			
Letter: CLADPW1 , Pg4, P3	COMMENT	Excerpt: 12.	Type: MS4s/Language Recommendation
<p>Therefore, to avoid misapplication of the proposed effluent limitations in Table 1 of Appendix A, the County and the LACFCD recommend that Responses to Comments—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 Mercury Provisions.</p>			

clarifying language be added to indicate that these effluent limitations are not applicable to municipal stormwater discharges.			
Response: No change to the provisions is needed. The provisions are clear that the water column translators only apply to non-storm water NPDES dischargers.			
Letter: CLADPW1 , Pg4, P4	COMMENT	Excerpt: 13.	Type: Hg Sources
VII. 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.			
Response: Please see response to comment ACWA1-92.			
Letter: CLADPW1 , Pg5, P1	COMMENT	Excerpt: 14.	Type: Hg Sources
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.			
Response: See Responses to Comments WAPA2 – 79 and 83.			
Letter: CLADPW1 , Pg5, P2	COMMENT	Excerpt: 15.	Type: TMDLs
VIII. 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 TMD~s. 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.			
Response: Please see Response to Comment WSPA2-29.			
Letter: CLADPW1 , Pg5, P3	COMMENT	Excerpt: 16.	Type: 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.			
Response: Please see Response to Comment WSPA2-29.			
Letter: CLADPW1 , Pg5, P4	COMMENT	Excerpt: 17.	Type: More Time
IX. The State Water Board Should Allow Additional Opportunity for Public Comment			

<p>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.</p>			
<p>Response: Please see Responses to Comments WSPA2-2 and MerclD1-7.</p>			
Letter: CLADPW1 , Pg5, P5	COMMENT	Excerpt: 18.	Type: Summary
<p>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.</p>			
<p>Response: Comment noted.</p>			

NCWA1**Author:** David J. Guy **Title:** President **Organization(s):** Northern California Water Association**Address:** 455 Capitol Mall, Suite 335, Sacramento, CA 95814-4496**Interest Group:** Choose an item.**Date:** 2/17/2017**Contact person:** David J Guy**Phone:** (916)442-8333**E-mail:** Not Provided

Letter: NCWA1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greeting/beginning
The Northern California Water Association (NCWA) submits these comments on the January 3, 2017 draft Staff Report for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries in California—Tribal and Subsistence Beneficial Uses and Mercury Provisions (Plan).			
Response: Comment noted.			
Letter: NCWA1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: background/history
NCWA is working with many of our partners to advance the economic, social, and environmental sustainability of the Sacramento Valley by enhancing and preserving its water rights, water supplies and water quality for multiple beneficial uses, including supporting the rich mosaic of farmlands, cities and rural communities, refuges and managed wetlands, and the meandering rivers that provide habitats for fisheries and wildlife.			
Response: Comment noted.			
Letter: NCWA1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Summary
Our comments focus on Appendix A of that draft report, which contains the proposed provisions for Part 2 of the Plan. Specifically, we are requesting some edits to Part II of Appendix A, which describes the proposed new beneficial uses that would be added to the plan.			
Response: Comment noted.			
Letter: NCWA1, Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Background/history
During the February 1 State Water Board staff workshop, staff discussed in detail the relationship between the proposed new beneficial uses in the Plan and potential instream flow requirements. Staff confirmed that the Tribal Tradition and Culture beneficial use is being developed to address navigation, ceremonies, and fishing, gathering and consumption of natural aquatic resources, including fish, and that the Tribal Subsistence and Subsistence Fishing beneficial uses are being developed to address concerns related to risks to human health from fish			

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consumption. Staff confirmed that these latter beneficial uses are not being developed to protect or enhance fish populations or aquatic habitats, and that several existing Porter-Cologne beneficial uses, including WARM, COLD, AQUA, MIGR and SPWN, already are available and being used for these purposes. Because some interested parties had raised concerns about this issue, staff added clarifying language to the draft report.			
Response: Comment noted.			
Letter: NCWA1 , Pg2, P1	COMMENT	Excerpt: 5	Type: Language Recommendation
While we appreciate that clarifying language has been added to the draft staff report, we are concerned that it may not be included in the text that is adopted for the actual amendments to Chapter II of the Plan. We therefore propose that the text regarding beneficial uses on pages A-3 to A-4 of Appendix A of the draft staff report be edited as shown in the enclosed document.			
Response: Comment noted.			
Letter: NCWA1 , Pg2, P2	COMMENT	Excerpt: 6	Type: Language Recommendation
Our first proposed addition is to add the following paragraph to the text regarding beneficial uses:			
<p style="padding-left: 40px;">The State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use. However, it is not anticipated that flow objectives would be developed to support the activities contained in the Tribal Traditional & Cultural beneficial use definition.</p>			
Response: Please see response to Comment ACWA1-12.			
Letter: NCWA1 , Pg2, P3	COMMENT	Excerpt: 7	Type: Language Recommendation
This text already appears on page 108 of the January 3 draft staff report. We are requesting that it be added to the text of the plan that will be adopted by the State Water Board so that staff’s confirmation of this point will be carried forward into the adopted plan.			
Response:			
Letter: NCWA1 , Pg2, P4	COMMENT	Excerpt: 8	Type: Language Recommendation
Our other proposed additions are to add the following text at the end of each new beneficial-use definition:			
<p style="padding-left: 40px;">but not including protection or enhancement of fish populations or aquatic habitats.</p>			
Response: This change will not be made; please see Response to Comment ACWA1-33.			
Letter: NCWA1 , Pg2, P5	COMMENT	Excerpt: 9	Type: Language Recommendation
The proposed Plan text already states that “[t]he function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic species.” Our proposed additions to the definitions of these two beneficial uses would confirm this point and would be included in the actual definitions that may be added to Basin Plans for specific basins in the future. Without these additions, cross references to the adopted Inland Surface Waters Plan would be necessary every time this issue comes up. Our proposed addition of this same text to the Tribal and Culture beneficial use is appropriate to clarify that purposes covered by this beneficial use do not			

include these two purposes, which, as discussed above, already are covered by several other beneficial uses.

Response: Please see Response to Comment ACWA1-33.

INDUSTRY2

Author: Various **Title:** None **Organization(s):** Building Industry Legal Defense Foundation, California Association of Winegrape Growers, California Building Industry Association, California Chamber of Commerce, California League of Food Processors, California Manufacturers & Technology Association, California Metals Coalition, Chemical Industry Council of California, Construction Industry Coalition on Water Quality, National Federation of Independent Business, Western States Petroleum Association

Address: Various **Interest Group:** INDUSTRY

Date: 2/17/2017

Contact person: Dawn Koepke **Phone:** 916-930-1993 **E-mail:**

Letter: INDUSTRY2 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Introduction
On behalf of the signatories to this letter, we appreciate your consideration of the following comments with regard to the proposed Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives under the Inland Surface Waters, Enclosed Bays & Estuaries Plan as released for public review and comment on January 4, 2017. These comments seek to highlight but a few of the critical issues of importance to us including process and timeline, point sources, Numeric Action Levels, and attainability.			
Response: Comment noted.			
Letter: INDUSTRY2 , Pg1, P2	COMMENT	Excerpt: 2	Type: Not enough time.
Process & Timeline			
Based on the timeline provided by staff, we understand the State Water Resources Control Board (SWRCB) has set a comment deadline of February 17th to enable an ambitious timeline for adoption of the Beneficial Use definitions and Mercury Water Quality Objectives (WQO). As currently intended, the Board aims to adopt these provisions before the U.S. EPA Consent Decree deadline of June 30, 2017. We remain concerned, however, that this timeline will drastically condense the opportunity for meaningful engagement by industrial stakeholders. While interrelated, the two sets of provisions are distinct and will have widespread impact on industrial dischargers in the state. Despite this widespread impact, we have been provided a mere 45 days in which to review a more than 700 page staff report and technical supporting documents, assess all of the potential impacts, contemplate proposed revisions to mitigate concerns and draft comments for submission.			
Response: Please see Response to Comment WSPA2-2.			
Letter: INDUSTRY2 , Pg2,	COMMENT	Excerpt: 3	Type: Split the Project

Responses to Comments—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 Mercury Provisions.

P1			
In this regard, we urge the Board to adopt our request that the provisions be bifurcated to allow for more time to work with the Board and staff to identify revisions that may help to alleviate the regulated community’s serious concerns.			
Response: Please see Responses to Comments WSPA2-3, and ACWA1-19.			
Letter: INDUSTRY2 , Pg2, P2	COMMENT	Excerpt: 4	Type: Arbitrary and Cap
<u>Point Sources</u>			
<p>By staff’s own admission in the Staff Report, point sources (i.e. industrial sources) are a minor contribution of mercury as compared with other sources. In this regard, we question the approach contemplated in the Provisions that would impose stringent numeric limitations on those sources when they will have little, if any, effect on mercury concentrations in fish and the environment. More specifically, the Staff Report notes the following:</p> <p style="text-align: center;"><i>“Even if all sources of the contaminants are eliminated, the contaminants are likely to remain high for decades, because either they do not degrade or they degrade very slowly. Much of the mercury in fish today is thought to be from historic mining in the late 19th century and early 20th century. Further, current sources may not be directly regulated by water boards (e.g., atmospheric emissions, naturally occurring in soils, or geothermal sources)” (page 108).</i></p> <p>The Staff Report clearly indicates that point sources are not the culprit for mercury; rather, non-point sources have been documented to provide the largest fraction of mercury in the State’s water bodies. Without changing course and continuing to focus mercury reductions on municipal and industrial discharges will not achieve the state’s objectives given the small relative contribution, and would therefore be arbitrary and capricious and an abuse of discretion.</p>			
Response: Please see Response to Comment WSPA2-21.			
Letter: INDUSTRY2 , Pg2, P3	COMMENT	Excerpt: 5	Type: Too Mercury Source
Stringency and focus of mercury limits and controls should be commensurate with the significance of the contributing source. As exemplified throughout the draft report (e.g., Table N-11), watershed contributions of mercury vary significantly depending upon source type. In fact, the largest contributors of mercury are not permitted sources such as municipal wastewater and industrial dischargers with NPDES permits. Rather, the largest mercury sources are tributaries, sediment disposition from non-point sources (e.g., storm water, bed erosion) and legacy mining operations. While it is acknowledged that statewide mercury limits are necessary to protect beneficial uses, the stringency and focus of control should be commensurate with the source and its corresponding mercury loading. Tighter controls for NPDES point sources will not result in significant reductions in mercury levels. Targeting this sector will not achieve the state’s objectives. Rather, the state should focus more effort, investment, and resources on non-point sources such as legacy mining sites. If appropriate focus is not applied to the most significant sources,			

mercury water quality will not improve and significant additional burdens on already stringently regulated dischargers is not justified or reasonable.			
Response: Please see Response to Comment WSPA2-22.			
Letter: INDUSTRY2 , Pg3, P1	COMMENT	Excerpt: 6	Type de minimis
<u>Water Concentration-Based Objectives for Mercury</u>			
<p>The Staff Report recommends that the SWRCB adopt statewide Mercury WQOs that are based on water concentration targets. (See, Issue L, Option 1 (Recommended), Staff Report/SED at pages 144-151.) The other option considered – but rejected by State Board staff – would establish fish tissue-based mercury targets. (See, Issue L, Option 2.) For reasons discussed below, the State Board should reject “Option 1” and instead direct staff to pursue fish tissue-based objects as described in “Option 2.”</p> <p>At the outset, it is important to note that water column concentration targets recommended by staff are based on the application of very complex calculations using bioaccumulation factors – or “BAF” – that related fish tissue concentrations to mercury in the water column. Further, the application of these water concentration targets would, by their very nature, only be applied to traditional point sources such as municipal and industrial wastewater treatment facilities. These traditional point sources are almost routinely demonstrated to be statistically insignificant sources of mercury to California’s waters. Thus, if the State Water Board were to embrace this approach, these de minimis point sources would face the specter of having to achieve ultra-low mercury effluent limits, even where their collective contribution to mercury loading is often infinitesimal. Indeed, in San Francisco Bay, municipal and industrial dischargers combined account for less than 1.4% of the ongoing mercury loading to San Francisco Bay. (See, San Francisco Bay Mercury TMDL (2006).)</p>			
Response: Please see Response to Comment WSPA2-61.			
Letter: INDUSTRY2 , Pg3, P3	COMMENT	Excerpt: 7	Type: Inappropriate in using BAFs
<p>Turning to specific concerns of staff’s approach in “Option 1”, we note that the BAF-based concentration numbers are based on US EPA’s “default” BAF for lakes and rivers. This reliance on a nationwide BAF grossly oversimplifies the extremely complex process of bioaccumulation, and completely ignores site-specific conditions in a given waterbody. Applying nationwide, default BAF – or even statewide BAF – and their translation factors, are highly variable, uncertain and can lead to erroneous effluent limits for a specific waterbody. Moreover, and as the Staff Report acknowledges, water quality criteria based on a national BAF can be over- or under-protective in different water bodies.</p> <p>To be appropriately used, BAF [sic] should be site-specific values because they are affected by and dependent upon numerous physical, chemical and biological factors. These include: pH, dissolved organic carbon, salinity, water flow, redox potential, fish size and age, and concentration depended demethylation. Conditions in California vary considerably between regions and, as a result, the nationwide or state-wide “default” values are likely to be inaccurate on a site-specific basis.</p>			

Response: Please see Response to WSPA2-77.			
Letter: INDUSTRY2 , Pg3, P5	COMMENT	Excerpt: 8	Type: Inappropriate in using BAFs
<p>Reliance on BAF for translating fish tissue targets into water column objectives was the favored approach, nationally, until 2010. Although USEPA called for the use of BAFs in its 2001 Guidance for implementing methylmercury criterion, this approach was basically rejected when USEPA issued its new “Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion” (USEPA Mercury Guidance) because evaluation of the relationship between total mercury concentrations in ambient waters showed no meaningful correlation with the levels of mercury in fish tissue. According to the 2010 Mercury Guidance:</p> <p><i>“Assessing and predicting methylmercury bioaccumulation in fish is complicated by a number of factors that influence bioaccumulation. These factors include the age or size of the organism; food web structure; water quality parameters such as pH, DOC, sulfate, alkalinity, and dissolved oxygen; mercury loadings history; proximity to wetlands; watershed land use characteristics; and waterbody productivity, morphology, and hydrology. In combination, these factors influence the rates of mercury bioaccumulation in various - and sometimes competing - ways. For example, these factors might act to increase or decrease the delivery of mercury to a waterbody, alter the net production of methylmercury in a waterbody (through changes in methylation and/or demethylation rates), or influence the bioavailability of methylmercury to aquatic organisms. Although bioaccumulation models have been developed to address these and other factors for mercury, their broad application can be limited by the site- or species specific nature of many of the factors that influence bioaccumulation and by limitations in the data parameters necessary to run the models.” (USEPA Mercury Guidance, §3.1.3.1 at p. 26.)</i></p>			
Response: Please see Response to Comment CVCWA1-11.			
Letter: INDUSTRY2 , Pg4, P1	COMMENT	Excerpt: 9	Type: Inappropriate in using BAFs
<p>One consequence of using BAFs to establish water column objectives is that it typically leads to NPDES effluent limits that are based on these water column numbers. In fact, one of the primary justifications provided in the Staff Report for recommending “Option 1” was the ease in which Regional Board permit writers can implement the WQOs with respect to traditional point sources. However, selecting this Option is simply likely to obscure the insignificance of NPDES sources to fish tissue concentrations at the broader watershed level and instead to focus on an end-of-pipe approach to NPDES permitting.</p>			
Response: Please see Response to Comment CVCWA1-16.			
Letter: INDUSTRY2 , Pg4, P2	COMMENT	Excerpt: 10	Type: Relative Source Contribution
<p>While typical approaches to managing mercury loads via the TMDL framework lead to more holistic efforts to control mercury sources and enable Regional Boards to have a clear picture of the relative importance of NPDES sources to fish tissue levels and provides, the end-of-pipe</p>			

<p>permitting approach fails to recognize or account for the relative importance of a permitted source. This leads to the situation - described in the Staff Report/SED - where significant treatment plant technology upgrades are anticipated for municipal and industrial point sources, even though those sources are recognized to be insignificant. (Staff Report §6.12.3 at p. 146.) According to a 2013 assessment of treatment technologies available to achieve ultra-low mercury water concentration limits (5 ng/L) in the State of Washington, only advanced treatment (micro-filtration/reverse osmosis) can reliably attain such low, end-of-pipe limits, and at a capital cost of approximately \$350 million for a 25 MGD treatment facility.</p>			
<p>Response: Please see Response to Comment ACWA1-210.</p>			
Letter: INDUSTRY2 , Pg4, P3	COMMENT	Excerpt: 11	Type: Inappropriate in Using BAFs
<p>Another reason for the State Board to reject the BAF-derived water column objectives approach (particularly for implementation of NPDES-permitted municipal and industrial point sources) is that it is not required under the Clean Water Act (CWA). The decision to use BAFs, instead, is a policy choice that is intended to simplify the analysis of reasonable potential and the derivation of effluent limitations in the NPDES permitting process. But this choice comes with many disadvantages, many of which are recognized in the Staff Report. Given that it is a policy choice for the State Board, it is also appropriate to identify and understand the disadvantages associated with this decision.</p>			
<p>Response: Please see Response to Comment CVCWA1-11.</p>			
Letter: INDUSTRY2 , Pg5, P1	COMMENT	Excerpt: 12	Type: Inappropriate in Using BAFs
<p>It is important to point to the historical underpinnings that lead to the use of BAFs in regulating mercury at both the federal and state levels. In 2000, USEPA adopted mercury water column standards for California part of the California Toxics Rule (CTR), relying on bioaccumulation factors. However, USEPA readdressed national mercury objectives in 2010 when it adopted the Mercury Guidance for Tribes and states for implementing Clean Water Act requirements. The Mercury Guidance pointedly recommends that mercury criteria be adopted as fish tissue standards. Notably, USEPA recommends against converting fish tissue standards into water column standards through the application of BAFs, in large part due to the recognition that the determination and use of total mercury BAFs is complex and problematic. Indeed, USEPA's 2010 Mercury Guidance specifically states that, "[a] state or authorized tribe could decide to develop TMDLs and calculate WQBELs in NPDES permits directly without first measuring or calculating a BAF." (USEPA Mercury Guidance, §3.1.2 at p. 21.)</p>			
<p>Response: Please see Response to Comment CVCWA-12.</p>			
Letter: INDUSTRY2 , Pg5, P2	COMMENT	Excerpt: 13	Type: Inappropriate in Using BAFs
<p>Lastly, there are two important regulatory actions taken by the State Water Board in the past ten years where the BAF approach for translating fish tissue standards into water column concentration objectives were rejected. These actions were the State Water Board's approvals of the San Francisco Bay and Sacramento-San Joaquin Delta Mercury TMDLs. It should also be noted that USEPA approved both of these fish tissue-based mercury control plans. Not surprisingly, when it adopted the 2010 Mercury Guidance, USEPA concluded that fish tissue standards were more appropriate for mercury criteria development to more "closely tie" the "fishable designated use goal" to particular waterbodies, to more</p>			

consistently relate applicable fish tissue concentration values with how fish advisories are issued, and because at environmentally relevant concentrations, some forms of mercury are easier to detect in fish tissue than in water samples. (See, USEPA Mercury Guidance, §3.1.2.2 at p. 22.)			
Response: Please see Responses to Comments CVCWA1-11 through 15.			
Letter: INDUSTRY2 , Pg5, P3	COMMENT	Excerpt: 14	Type: IGP-NAL
<u>Numeric Action Levels</u>			
Under the stormwater Industrial General Permit (IGP), permittees are subject to Numeric Action Levels (NAL) for a number of contaminants, including mercury. The IGP contains annual and instantaneous maximum NALs with the annual NALs having been established as the 2008 EPA Multi-Sector General Permit (MSGP) benchmark values. They are applicable for all parameters including total mercury, which is set at 1400 ng/L. Despite the Staff Report providing that the “provisions would not impose any new requirements” (page 10), they would result in the currently established NAL being set at a more stringent 300 ng/L.			
Response: Since the proposed 300ng/L is a Numeric Action Level (NAL), exceeding that concentration is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Reponse Actions (ERA) if the NAL is exceeded. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process is available to Dischargers now and that is why the Staff Report suggests the “provisions would not impose any new requirements,”			
Letter: INDUSTRY2 , Pg5, P3	COMMENT	Excerpt: 15	Type: IGP-NAL.
This lower threshold and the rationale provided in the Staff Report inappropriately compare the use of a benchmark to a water quality criterion, which have very different purposes.			
Response: The proposed threshold will act the same as the rest of the Numeric Action Levels (NALs) already in the Permit.			
Letter: INDUSTRY2 , Pg5, P3	COMMENT	Excerpt: 16	Type: IGP-NAL.
Further, the Staff Report has not provided any analysis regarding the economic impact of the revised NALs on the total number of industrial facilities that this will affect.			
Response: The proposed NAL is not an effluent limit, water quality objective, or a receiving water limitation. An exceedance of the NAL is not a permit violation. It is also not a requirement to perform an economic analysis when developing NALs, none of the NALs currently in the Industrial General Permit have an economic impact analysis.			

Letter: INDUSTRY2 , Pg5, P4	COMMENT	Excerpt: 17	Type: IGP-NAL
While we understand the intent of the proposed provisions, we are concerned that the approach undermines the overarching construct of the IGP and the use of the USEPA MSGP benchmark values as a way to gauge pollutant control performance at a facility.			
Response: The proposed NAL will act just like the current NALs in the Industrial General Permit.			
Letter: INDUSTRY2 , Pg5, P3	COMMENT	Excerpt: 18	Type: IGP-NAL
In addition, we are concerned that the impact of the revised NAL on industrial facilities has not been adequately assessed. In this regard, we strongly urge the Board to retain the current IGP benchmarks			
Response: the proposed NAL is not a effluent limit, water quality objective, or a receiving water limitation. An exceedance of the NAL is not a permit violation. The proposed NAL will act just like the current NALs in the Industrial General Permit. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs			
Letter: INDUSTRY2 , Pg6, P1	COMMENT	Excerpt: 19	Type: Attainability.
Attainability			
As a clarification of the legislature’s intent on required considerations for establishing WQOs, the California Water Code § 13241 establishes factors for Regional Boards to consider in establishing WQOs including, “(c) Water quality conditions that <i>could reasonably be achieved through the coordinated control of all factors which affect water quality in the area</i> ” and “(d) Economic considerations”.			
Response: Please see Response to Comment WSPA2-4.			
Letter: INDUSTRY2 , Pg6, P1	COMMENT	Excerpt: 20	Type: Attainability.
In addition, in the definition of a water quality control plans in the California Water Code § 13050 requires that the water quality control plans include, “A program of implementation needed for <i>achieving</i> water quality objectives.” These factors must also be considered by the State Board in establishing statewide WQOs.			
Response: Please see Response to Comment WSPA2-4.			
Letter: INDUSTRY2 , Pg6, P2	COMMENT	Excerpt: 21	Type: Attainability
Unfortunately, however, the Staff Report as currently drafted does not provide a clear, requisite program of implementation necessary for reasonably achieving the proposed objectives. As a matter of fact, the Staff Report concludes:			

“...it may take a significant period of time to attain the objectives by implementing the mercury controls in the Provisions and developing and implementing other water quality control programs, such as TMDLs. Additionally, the Tribal Subsistence Fishing Water Quality Objective and the Subsistence Fishing Water Quality Objective may be very difficult to achieve in most waters as discussed in Section 6.5” (page 264).

Response: Please see Response to Comment WSPA2-5.

Letter: INDUSTRY2 , Pg6, P2	COMMENT	Excerpt: 22	Type: Attainability .
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Designation under beneficial uses typically subject permittees to numeric values that seek to ensure that those uses are protected, maintained or attained. However, these numeric values often end up being receiving water limitations and/or total maximum daily waste load allocations that are nearly impossible for stormwater permittees to meet. They do not typically have control over the sources of pollutants in question. Given the largest sources of Mercury are acknowledged to come from non-point sources, these provisions – if adopted by the Board – would set standards that are essentially unattainable and would therefore place an unfair regulatory burden on point dischargers despite the fact that whatever levels of controls are instituted, the standards will never be met due to the non-point source contribution of mercury.

Response: Please see Responses to Comments WSPA2-22, and 83.

Letter: INDUSTRY2 , Pg6, P3	COMMENT	Excerpt: 23	Type: Attainability.
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In this regard, we urge the Board to revise the Staff Report to provide a range of acceptable implementation options and assess whether they would result in reasonable attainability of the proposed objectives.

Response: Please see Responses to Comments WSPA2-22, and 83.

Letter: INDUSTRY2 , Pg6, P3	COMMENT	Excerpt: 24	Type: Attainability.
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Further, to avoid situations where the new beneficial uses are designated by a regional board for a particular waterbody without the ability for industrial dischargers to be in attainment, the Board should take the time to work with the regulated community and other stakeholders to identify site specific factors and other criteria that should be considered prior to the designation of the new beneficial uses.

Response: Please see Response to Comment MerclD1-7.

Letter: INDUSTRY2 , Pg6, P3	COMMENT	Excerpt: 25	Type: BU/Designation/Guidance
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More specifically, guidance should be prepared to set forth the minimum data and information details upon which a regional board should base its consideration of designating a waterbody with one of the new beneficial uses. Currently, the Staff Report contains no minimum informational or data standards for regional boards and the SWRCB to base its consideration. Such guidance should be solidified in a way to provide for consistent review and application of the beneficial use designation by regional boards, understanding that each region and water body may need to take into account those site specific considerations.

Response: Please see Response to Comment CVCWA1-58.			
Letter: INDUSTRY2 , Pg7, P1	NOT COMMENT	Excerpt: 26	Type: Greet/Ending
On behalf of the signatories to this letter, we appreciate your consideration of our comments and look forward to continuing to work with the Board to address these significant issues. If you have questions regarding the points raised in this letter, please contact Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.			
Response: Comment noted.			

RFCutting1

Author: Robert F. Cutting **Title:** Mr. **Organization(s):** Private Citizen

Address: [Click here to enter text.](#) **Interest Group:** Individual

Date: 1/24/2017

Contact person: Robert F. Cutting **Phone:** 707-745-1718 **E-mail:** Rfcutting@comcast.net

Letter: RFCutting1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Section Dredge
1. Salmon are not being killed or harmed by suction dredging; nor are any other endangered species. Suction dredges remove 98 % elemental mercury and by aeration the 2 % or less, [sic] that is left, and not amalgamated to particles of 63 microns or less, which is most likely going to be converted to elemental mercury, to be removed at subsequent time by a dredge.			
Response: Besides a narrative regarding the Suction Dredge project, the Provisions do not address suction dredge mining or propose any requirements for suction dredge mining. Also, a description of the State Water Board's concerns regarding suction dredge mining and how those concerns may relate to the provisions is included Appendix F of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report).			
Letter: RFCutting1 , Pg1, P1	COMMENT	Excerpt: 2	Type: Suction Dredging
Methylmercury [sic] is not created by the dredge and can only be formed in the presence of organic material under anaerobic or possibly facultative conditions.			
Response: Staff agrees that methylmercury is not formed by suction dredging, but asserts that methylmercury may be liberated and mobilized in water due to suction dredging. Also, a description of the State Water Board's concerns regarding suction dredge mining and how those concerns may relate to the provisions is included Appendix F of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report).			
Letter: RFCutting1 , Pg1, P2	NOT COMMENT	Excerpt: 3	Type: Suction Dredging

2. Salmon may be helped by dredges because they can leave holes that act as refugees from the hot summer temperatures of the water streams, and protection from boats [sic] rafts, and kayaks. They may also provide hiding places for young fish. There are also reverences [sic] that dredging break [sic] the cycle of Ick, Ichthyophirius, (a ciliated protozoan); a parasite affecting stressed fish. Those that say holes trap fish need to look at the fact that the holes may be the only place for the fish to survive in a drying stream.			
Response: Comment noted.			
Letter: RFCutting1 , Pg1, P	NOT COMMENT	Excerpt: 4	Type Suction Dredging
3. Dredgers do not dredge in waters where fish are spawning or eggs are present. Dredgers do provide gravel in stream beds where none may be present which can make ideal gravel for fish to lay eggs.			
Response: Comment noted.			
Letter: RFCutting1 , Pg1, P4	NOT COMMENT	Excerpt: 5	Type: Suction Dredging
4. When Antiquities are found on claims they are reported and areas avoided until those areas avoided until those area [sic] can be evaluated. Important sites that otherwise might never be found can be surveyed and evaluated. Dredgers typically work in the water stream, thus the stream has already disturbed any relics or historical items and I have not heard of anyone finding significant items.			
Response: Comment noted.			
Letter: RFCutting1 , Pg1, P5	NOT COMMENT	Excerpt: 6	Type: Suction Dredging
5. Gold miner [sic] and prospectors have historically been good for California. Gold mining is what San Francisco and Sacramento were built on. The miners built many of the flumes and dams that are currently used for irrigation and water supply. Some dams and railroad bedding were [sic] actually built with tailings from mines. The mines needed to get the ore to the crusher, smelters, and refiners and provided a reason to expand the rail system.			
Response: Comment noted.			
Letter: RFCutting1 , Pg1, P6	NOT COMMENT	Excerpt: 7	Type: Suction Dredging
6. Today mercury is not used, in the United States, in field gold recovery... but is a nuisance left over from legacy gold mining. Today's [sic] gravity separation systems and shaker tables provide a clean system for recovery. When mercury is present, in gold recovery, it causes complications that require the use of a retort to separate the gold from the mercury or other processes.			
Response: Comment noted.			
Letter: RFCutting1 , Pg1, P7	COMMENT	Excerpt: 8	Type: Suggestion: Selenium Treatment.
7. Mercury and selenium will bind and lessen the toxic effects of elemental mercury and methyl mercury toxicity. Maybe the Water Board should look into treating organically rich areas, where MeHg, [sic] is high in fish tissues with selenium. Once the mercury is bound it should no longer be available for Bio-accumulation [sic] and magnification in the down stream waters.			
Response: Although an essential micro-nutrient, selenium is also toxic to most life in even very small amounts. Although selenium has been used as a treatment for acute methylmercury poisoning through direct feeding of organisms, and there is evidence that the presence of selenium in the environment lessens bioaccumulation of methylmercury, Staff believe that simply adding selenium compounds to areas where			

methylmercury is present in high concentrations in fish tissue has the potential to create an environmental disaster.			
Letter: RFCutting1 , Pg1, P8	NOT COMMENT	Excerpt: 9	Type: Mercury source
8. The greatest percentage of Mercury in California streams is not going to come from dredges.9 Many of the coastal hills are loaded with mercury ore an provide a natural source.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P1	COMMENT	Excerpt: 10	Type: MeHg is not a problem
9. One thing that has not been talked about is seasonal turbidity, organics movement down stream, caused by seasonal turnover of lakes and streams by thermal inversion. Because of this and storm water run-off I think it is safe to say the organics in river, pond [sic] and lakes are not locking up the methylmercury.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P2	NOT COMMENT	Excerpt: 11	Type: Mercury source
10. One item that I noted in the draft copy eluded [sic] to a study that said that song birds had a high mercury load in their tissues (page 65). That caught my eye because I remember talk about the old Selby Smelter, that was located in Crockett, Ca. And the air pollution it had caused resulting from the wind blowing heavy metal through the wheat grasses in the area, which acted as natural filters in their seed grains, that were eaten by birds. There were even reports of horse deaths in the area attributed to the feed grasses.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P3	NOT COMMENT	Excerpt: 12	Type: NOT RELEVANT
11. In one of the WQCB workshop meetings their [sic] was reference to the use of a vacuum cleaner spreading Mercury and should not be used for Mercury clean up <u>but it should noted [sic] that there are special mercury vaccum [sic] that can in fact be used for Mercury cleanup.</u> These are special vacuum cleaners with special traps and filters called Mercury removal vacuums designed just for Mercury cleanup.			
Response: Thank you for informing the State Water Board of this technology.			
Letter: RFCutting1 , Pg2, P4	NOT COMMENT	Excerpt: 13	Type: Mercury abatement
12. The safest way mercury can be cleaned up is to do it under water. Bulding a berm around the Mercury and flooding the berm to submerge the Mercury and applying a squeezable suction bottle with a tube extensions [sic], containing <i>water</i> , while maintaining a water cover is one safe way to pick up an retain the Mercury. Note... always proper personal protection per MSDS requirements [sic]. This is how a miner would recover mercury droplets to put in proper storage.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P5	NOT COMMENT	Excerpt: 14	Type: Mines
13.It should be noted that the reason there are so many abandoned mines was not due to lack of gold. Presdient Franklin Delanor [sic] Roosevelt, by Exec. Order, Banned [sic] American citizens from owning gold in 1933. Executive Order 6102, remained in effect for 78 years until August 15, 1974, when President Gerald Ford signed Legislation [sic] removing the ban on ownership of gold by citizens. Needless to say that the miners by that time were too old to mine or were gone and the abandoned mines were no longer safe because of rotten timbers and unstable			

Responses to Comments—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 Mercury Provisions.

conditions.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P6	NOT COMMENT	Excerpt: 15	Type: Mines
14. It should be noted today the price of gold has risen and the per ounce price using suction dredging makes small mining affordable. Gold mining is a business.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P6	NOT COMMENT	Excerpt: 16	Type: Mines
An ounce of gold is just about what you can fit on a teaspoon because of its [sic] specific gravity, which is about 19 times heavier than water.			
Response: Comment noted.			
Letter: RFCutting1 , Pg2, P7	NOT COMMENT	Excerpt: 17	Type: Mines
15. It should be noted that gold mining is a business and if it not [sic] profitable will disappear. <u>The water quality act has to take into consideration the financial impact of its [sic] regulation.</u> Claims are Mineral Estates and pay local property taxes and BLM fees and can be bought and sold just like real estate. When profits are made taxes are paid on profits as any other business would do. Money is not only made on the minerals that come out of the ground but those who mine the miners [sic]; such as, hardware stores, gas stations, grocery stores, motels, hotels, campgrounds, RV centers, mining equipment, off road vehicles, and other items.			
Response: Comment noted.			
Letter: RFCutting1 , Pg3, P1	NOT COMMENT	Excerpt: 18	Type: NOT RELEVANT
16. Many vacation dollars are going out of state as miners travel to other states or countries to mine. At the same time vacationer [sic] that would have come to California are going to other places as recreational and small scale miners are stopped from using their rights, as requirements are being over regulated and bans are put in place.			
Response: Comment noted.			
Letter: RFCutting1 , Pg3, P2	NOT COMMENT	Excerpt: 19	Type: NOT RELEVANT
17. Gold prospecting and mining were over a \$100,000,000 dollar business in California Prior to the moratorium put in place around 2006.			
Response: Comment noted.			
Letter: RFCutting1 , Pg3, P3	NOT COMMENT	Excerpt: 20	Type: NOT RELEVANT
18. Based on the new rules, prohibiting the use of a motorized, suction devices, [sic] within 300 feet of any lake, river stream by definition should outlaw jet boats, outboard motors and some water pumps.			
Response: Comment noted.			
Letter: RFCutting1 , Pg3, P4	NOT COMMENT	Excerpt: 21	Type: NOT RELEVANT

19. Although the un- patented mining claim owner has title to the valued mineral [sic] they have found and no one, without permission of the claim holder, can take any minerals, the land itself is managed by the BLM or Forest Service and any one [sic] following the State Laws can hunt, fish, hike or camp on the claims.			
Response: Comment noted.			
Letter: RFCutting1 , Pg3, P5	NOT COMMENT	Excerpt: 22	Type: NOT RELEVANT
19. A patented claim owner, [sic] not only owns the valuable mineral but he also owns the land. BLM and Forest service [sic] are not involved in managing the property.			
Response: Comment noted.			

Yurok1			
Author: Thomas O'Rourke	Title: Chairman	Organization(s): Yurok Tribe	
Address: 190 Klamath Boulevard, PO Box 1027, Klamath, CA 95548		Interest Group:	CATribes
Date: 2/17/2017			
Contact person: Thomas O'Rourke	Phone: Not Provided	E-mail: Not Provided	

Letter: Yurok1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Yurok Tribe respectfully submits the following comments to the State Water Resources Control Board proposed 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 Mercury Provisions. Yurok commends the State Water Board on listening to, and working with, California tribes over the past four years in drafting and proposing beneficial use provisions that recognize the health needs of tribal people and our unique reliance on subsistence fishing.			
Response: Thank you for your comment and statement of support for the goals of the Provisions			
Letter: Yurok1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Author Description
Yurok people have lived off Klamath River resources since the beginning of time. Particularly, Chinook salmon have been-and are still-the primary staple of Yurok diets; many of our ceremonies celebrate and guide our relationship with the River and the fish. The health of the Klamath fishery is the health of the Yurok people, and, unfortunately, the degraded fishery is reflected in our present well being. The overdevelopment of the Klamath basin through mining, agriculture, and out-of-basin diversions have lead to poor water quality and fish diseases that threaten the existence of Klamath fish species. This is not unique to the Klamath, or the Yurok, and many California tribes are experiencing similar threats. It is imperative, therefore, that measures are undertaken that strive to improve water quality to meet the health needs of our tribal and non-tribal people who depend on our state's fisheries.			
Response: Comment noted.			
Letter: Yurok1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Support
This comment letter first supports the adoption of the three new proposed beneficial uses-Tribal Traditional and Cultural Use (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by the general population (SUB)-and the selection of Option 2 in Section 6.4 of the Staff Report. These designations will allow tribes and the state to work together to improve water quality for the resources critical to the tribe, such as water for ceremonies or ceremonial materials, as well as our fishery consumption-based needs.			

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Response: Comment noted.			
Letter: Yurok1 , Pg2, P1	COMMENT	Excerpt: 4	Type: Revised fish tissue mercury objective
<p>Second, Yurok supports the proposed water quality objectives for mercury. Regarding the numerical value of the water quality objectives associated with the T-SUB, Yurok strongly agrees with the statement in Option 2, Section 6.5.3 that water quality objectives should be tailored to "site-specific fish consumption." Because fish consumption varies culturally and geographically, and because tribes are often disproportionately negatively impacted by degraded water quality, tribes should be empowered to assist in crafting objectives that meet their needs. The proposed fish mercury concentration of 0.04 mg/kg, based on consumption rate of 142 g/day, is likely to be too high for many fishery-based tribes and providing a mechanism to alter that objective is critical. Because the proposed numerical objective is likely too high, Yurok supports a revised fish tissue mercury objective based on at least 175 g/day consumption rate as recommended by the California Indian Environmental Alliance comment letter. Further, Yurok supports the comment submission by the California Indian Environmental Alliance and its signatories on the above topics and all the issues raised by the Alliance.</p>			
Response: Please see Response to Comment CIEAetAI1-6.			
Letter: Yurok1 , Pg2, P2	NOT COMMENT	Excerpt: 5	Type: Greet/Ending
<p>The Yurok Tribe thanks the State Water Board in proposing the beneficial uses and water quality objectives that appreciate the health needs of California Indians. We hope that the State Water Board is courageous and unyielding in their support of the proposal and that it is adopted as quickly as possible. If the Tribe can help in any way moving this forward, please contact Louisa McCovey at (707) 482-1822 ext. 1 009.</p>			
Response: Thank you for your comment and statement of support for the goals of the Provisions			

SacRCSD1**Author:** Terrie L. Mitchell **Title:** Manager Legislative and Regulatory Affairs **Organization(s):** RegionalSan**Address:** 10060 Goethe Road, Sacramento CA 95827-3553 **Interest Group:** Choose an item.**Date:** 2/17/2017**Contact person:** Terrie L. Mitchell **Phone:** (916)876-6000 **E-mail:** Not Provided

Letter: SacRCSD1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Sacramento Regional County Sanitation District (Regional San) appreciates the opportunity to provide these comments on the Draft Staff Report, Including Substitute Environmental Documentation for 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 Mercury Provisions (Statewide Mercury Proposal). Regional San provides municipal wastewater treatment services to more than 1.4 million people in the greater Sacramento Region. Our treatment facility is regulated by the Central Valley Regional Water Quality Control Board (Regional Board) <i>via</i> an NPDES permit that is renewed every five years and the Statewide Mercury Proposal will have specific (and potentially problematic) impacts on our facility.			
Response: Comment noted.			
Letter: SacRCSD1, Pg1, P2	COMMENT	Excerpt: 2	Type: Description of Reg
We appreciate the importance and need to recognize the proposed beneficial uses related to tribal cultural and subsistence fishing. Our primary concerns relate to the processes and principles that will be used by Regional Boards in the designation and implementation of those uses. Our objectives are to ensure that meaningful reductions in levels of mercury in fish tissue can occur and that there are no costly unintended consequences to insignificant sources of mercury loadings that, in the end, will not yield the substantial reductions needed or the outcomes desired.			
Response: Comment noted.			
Letter: SacRCSD1, Pg1, P3	NOT COMMENT	Excerpt: 3	Type: Author Description
As you know, Regional San is in the midst of an expansive treatment facility upgrade to achieve NPDES permit limits adopted by the Regional Board in 2010. This Project, known as EchoWater, is currently under construction and has an estimated capital cost of \$1.7 billion and a completion date of 2023.			
Response: Comment noted.			

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Letter: SacRCSD1 , Pg2, P1	NOT COMMENT	Excerpt: 4	Type: Summary
The EchoWater project includes the following new treatment processes to be employed: biological nutrient removal, filtration, and new disinfection processes. Yet preliminary analysis of Regional San’s ability to achieve compliance with some of the newly-proposed Water Quality Objectives (WQOs) for mercury indicates that the treatment technology <i>currently being constructed</i> may not be able to meet those proposed new WQOs.			
Response: Comment noted. Responses to this argument are included in responses below.			
Letter: SacRCSD1 , Pg2, P2	COMMENT	Excerpt: 5	Type: Economics
Regional San has worked very closely with the Central Valley Clean Water Association (CVCWA) and California Association of Sanitation Agencies (CASA) in developing specific comments and suggested language changes to the Statewide Mercury Proposal, which were submitted under their letter dated February 17, 2017. Regional San hereby supports those comments – and the specific requested changes to Appendix A of the Draft Staff Report/SED (the Regulatory Language) and the proposed additions to include in the State Board’s resolution to provide guidance to Regional Boards. We believe these changes provided by CVCWA and CASA will achieve the goal of the Water Boards to recognize and protect the proposed new beneficial uses for Tribal and Subsistence Fishing and Cultural Lifeways, without placing undue – potentially very costly – new treatment requirements on traditional point sources (like Regional San) who are routinely determined to be insignificant sources of ongoing mercury loading to waterbodies in California.			
Response: Please see Response to Comment WSPA2-63.			
Letter: SacRCSD1 , Pg2, P3	COMMENT	Excerpt: 6	Type: WQOs/ Els
Regional San would like to specifically address “Issue L” (“ What procedure should be used to determine which municipal wastewater and industrial dischargers would need effluent limits? ”) contained in the Staff Report/SED. Issue L presents two approaches that would dictate whether and how Regional Boards would establish mercury WQOs for municipal wastewater and industrial dischargers. The State Board’s staff recommendation (“Option 1”) is to use a mercury water column concentration approach where WQOs are derived from calculating bioaccumulation factors (i.e., multipliers that relate fish tissue concentrations to mercury in the water column, also known as “BAFs”) instead of relying on mercury concentrations in fish tissue. Our opposition to using water column concentrations for WQOs that are based on BAFs is that this approach is not well-supported by best available science, can be extraordinarily complex and variant for different waterbodies, will have potentially catastrophic impacts on point sources (who are typically a very small source of mercury and other priority toxic pollutants), and are not legally required under state or federal law. Regional San respectfully requests that the State Water Board select “Option 2”, which would establish mercury WQOs based on fish tissue concentrations.			
Response: Please see Responses to Comments ACWA1-220 and CVCWA1-11 and 12.			
Letter: SacRCSD1 , Pg2, P4	COMMENT	Excerpt: 7	Type: Insufficient Pub Review
At the February 7, 2017 State Water Board hearing on the Mercury Proposal, many commenters supported the creation of a collaborative stakeholder process that will allow all interested parties (including Tribes, dischargers, regulators, and representatives from the subsistence fishing and Environmental Justice NGO community) to provide input to State Board staff in developing appropriate guidance for use by Regional Boards in implementing the proposed mercury WQOs with the proposed new beneficial uses. Regional San strongly supports this approach as			

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<p>the best means of developing implementation guidance that accounts for varied points of views, but will have the best chance for success in terms of achieving the mercury loading reductions envisioned by the State Board. It is important that this process is robust, open, transparent and inclusive of all interested stakeholders. We would discourage the use of focused stakeholder meetings, as this isolates interested parties and limits the ability to have productive discussions and limits the ability to collaborate and develop innovative solutions.</p>			
<p>Response: Please see Response to Comment MerCID1-7.</p>			
Letter: SacRCSD1 , Pg3, P1	COMMENT	Excerpt: 8	Type: Implementation
<p>During the development of the Central Valley Regional Water Board Methylmercury TMDL for the Delta, a collaborative stakeholder-based approach was employed that resulted in a final TMDL for the Delta that was ultimately supported by stakeholders and that is now being successfully implemented, and is anticipated to achieve <i>real</i> mercury loading reductions for the Delta. We believe the lessons learned there could be applied to the Statewide Mercury Proposal and the process going forward.</p>			
<p>Response: Comment noted.</p>			
Letter: SacRCSD1 , Pg3, P2	NOT COMMENT	Excerpt: 9	Type: Greet/Ending
<p>Regional San appreciates the willingness of the State Water Board Members and staff to engage with stakeholders including CASA, CVCWA, and Regional San over the past several weeks, and we look forward to working with the Water Boards and other stakeholders in the near future in what we hope is a fair and realistic plan for implementation.</p>			
<p>Response: Comment noted.</p>			

Colrvine1**Author:** Thomas Lo **Title:** Water Quality Administrator **Organization(s):** City of Irvine**Address:** 1 Civic Center Plaza, Irvine, CA 92606-5208 **Interest Group:** STORM**Date:** 2/16/2017**Contact person:** Thomas Lo **Phone:** (949)724-6000 **E-mail:** Not Provided

Letter: Colrvine1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Thank you for the opportunity to comment on the Draft Staff Report, including the Substitute Environmental Documentation for 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 Mercury Provisions, issued on January 3, 2017 ("Staff Report"), regarding the Board's initiative to regulate mercury levels in California water-bodies (hereinafter "Mercury Policy").			
Response: Comment noted.			
Letter: Colrvine1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Author Description
I write on behalf of the City of Irvine ("City"), a City with a long-standing commitment to water quality improvement in Coastal Orange County. The City writes separately to respectfully ask that the Board consider the comment letters submitted by the County of Orange Stormwater Program ("Orange County") and the California Stormwater Quality Association ("CASQA") on the Draft Staff Report, and to make revisions to the draft Staff Report, and any subsequent proposed order to implement the Mercury Policy, based upon the recommendations contained in the Orange County and CASQA comment letters. The City hereby incorporates by reference into this comment letter, and asserts as if separately stated herein, the comments submitted by the County of Orange and CASQA on or about February 17,2017.			
Response: Comment noted.			
Letter: Colrvine1, Pg1, P2	COMMENT	Excerpt: 3	Type: Clarify WQO: Dewatering
The City also writes to request the Board clarify application of the new proposed water quality objectives to groundwater dewatering operations and other non-traditional "discharges" currently regulated under general and individual and NPDES permits in Orange County. Dewatering permits, such as those issued within the City, protect roads and other critical infrastructure in areas where rising groundwater is prevalent and unavoidable. The City is concerned that the proposed new water quality objectives, in or near coastal lagoons, have the potential to put			

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<p>municipalities in coastal regions that conduct dewatering operations into a perpetual state of non-compliance, caught between the requirement to protect critical infrastructure via pumping rising groundwater, and the Mercury Policy's potential requirement for a city to strictly meet water quality objectives at the end of pipe. Compounding the problem (and unlike a traditional industrial or POTW discharger), there would be limited (if any) ability for a city to "treat" rising groundwater at existing discharge points for mercury, and any miniscule amounts of mercury discharged through dewatering would, in many cases, have entered the watershed with or without the NPDES permitted dewatering operation. Accordingly, the City recommends that the Draft Staff Report either exempt dewatering operations from the scope of the Mercury Policy absent a finding by the Regional Board that such dewatering operations are a material source of mercury loading, or alternatively clarify in Section 6.13.3 that dewatering permits are, absent evidence to the contrary, generally considered to be the type of "insignificant discharges" that are not anticipated to have reasonable potential to cause exceedances of water quality objectives for mercury.</p>			
<p>Response: Please see Response to Comment ACWA1-11.</p>			
Letter: Colrvine1, Pg2, P1	COMMENT	Excerpt: 4	Type: Unfunded Mandate
<p>Finally, the City notes that the Mercury Policy would appear to impose potentially large unfunded mandates on the City, as well as other similarly situated city and county governments throughout California. At least some of the new regulatory programs described in the Staff Report are potentially unfunded mandates because they mandate a higher level of service (beneficial uses and water quality objectives that are not required, or are stricter, than EPA requirements) than federal law requires. Accordingly, the City recommends that the Board describe how it intends to reimburse local governments for the large costs that local governments will potentially have to incur (without fee authority to recover) as a result of implementation of the Mercury Policy.</p>			
<p>Response: Please see Response to Comment ACWA1-173</p>			
Letter: Colrvine1, Pg2, P2	NOT COMMENT	Excerpt: 5	Type: Greet/Ending
<p>Again, thank you for the opportunity to comment.</p>			
<p>Response: Comment noted.</p>			

CMacquarie1**Author:** Charles Macquarie **Title:** Mr. **Organization(s):** not specified**Address:** 1945 Berryman St., Apt. C, Berkeley, CA 94709 **Interest Group:** Individual**Date:** 2/23/2017**Contact person:** Charles Macquarie **Phone:** Not provided **E-mail:** charliemacquarie@gmail.com

Letter: CMacquarie1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: General Support
Thank you for your efforts to protect communities that consume fish at higher than average quantities from harmful levels of contaminants. California’s current beneficial use designations result in water quality control plans and permits to pollute our waterways that do not adequately protect tribal communities or other communities that fish for subsistence purposes.			
Response: Thank you for your support.			
Letter: CMacquarie1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Beneficial uses
To address this problem, we urge you to: - Adopt all three proposed beneficial designations: Tribal Tradition and Culture, Tribal Subsistence Fishing and Subsistence Fishing by the general population. - Provide a clear process by which Tribes may designate waters for cultural and subsistence fishing uses. - Require water quality control plans and permits that provide numeric criterion, rather than narrative criterion. - Protect tribes from pollution originating off of tribal lands. - Address the health impacts among Tribal members from lack of fish. - Do not delay the comment period or the process of adopting these new beneficial uses.			
Response: In regards to the first and second points, please see Response to Comment CIEAEtA11-3. In regards to the third point, please see Response to Comment Shilling1-5. In regards to the fourth point, the Tribal Subsistence Water Quality Objective and the Tribal Tradition and Culture Mercury Water Quality Objectives are designed to achieve protection of tribal subsistence consumption of fish and tribal traditional and cultural uses of fish, respectively, wherever the corresponding beneficial uses are designated. Regarding the fifth point, please see Appendix T, Question 1 of the Staff Report. Regarding the final point, the State Water Board does not plan to delay the adoption of the new Beneficial Uses.			
Letter: CMacquarie1 , Pg1,	NOT COMMENT	Excerpt: 3	Type: Ending/Greeting

P3			
This is an important step in addressing the deep structural inequalities that have plagued tribal relations throughout the history of white settlement in California.			
Response: Comment noted.			

MAdaminian1**Author:** Marianne Adaminan **Title:** Ms. **Organization(s):** None**Address:** Not provided **Interest Group:** Individual**Date:** 2/21/2017**Contact person:** Marianne Adamian **Phone:** Not provided **E-mail:** mkadaminan@ucdavis.edu

Letter: MAdaminian1 , PgX, PY	NOT COMMENT	Excerpt: 1	Type: General Support
I write in full support of the proposed beneficial use designations: Tribal Traditional and Cultural Use; Tribal Subsistence Fishing Use; and Subsistence Fishing Use. The Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations are long overdue. Tribal members' relationship to fisheries throughout California, and tribal members' level of consumption of fish from California waterways are not accounted for in current beneficial use designations and associated water quality standards. The current beneficial uses and standards assume a qualitatively and quantitatively lower level of use and subsistence than that practiced by many California tribal members. The current beneficial uses are effectively sickening tribal members by disregarding their extensive use of fish and other aquatic flora and fauna. Beneficial use designations must protect all Californians; most significantly first Californians, who have been stewarding these resources and waterways since time immemorial.			
Response: Thank you for your comment and statement of support.			
Letter MAdaminian1 , Pg 1, P3	COMMENT	Excerpt: 2	Type: Beneficial Uses
I encourage the Board to adopt the proposed beneficial use designations, and to apply them immediately throughout the state. The 2014 California Tribes Fish-Use study by Shilling et al. looks at tribal members' current suppressed rate of consumption, which is approximately half of the traditional rate of consumption. The study included surveys with 23 tribes in the state, who use approximately 25% of waterbodies in the state. This indicates that, if all tribes participated in the study, their uses of fisheries would involve all waterbodies throughout the state. As such, all waterbodies should be subject to Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. I also feel strongly that polluters, or those discharging wastewater into waterways, should have to prove that they are not negatively impacting the Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations, rather than tribes having to prove that these beneficial uses apply to the waterways in question. Tribal environmental departments are already often stretched thin, and setting up another process in which tribes have to prove cultural importance of a waterway or aquatic species would place another onerous and undue burden on tribes. I also call on the Board and associated agencies to commit to strongly protect these significant and much-needed beneficial use			

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designations once they are approved. It is within your authority, for example, to designate flow regimes that protect the Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. Please use that authority to protect the tribal rights that have been disrespected for so long.			
Response: We appreciate your support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.			
Letter: MAdaminian1 , Pg1, P5	NOT COMMENT	Excerpt: 3	Type: General Support/Ending
In sum, I applaud the State Water Resources Control Board for considering adopting the proposed Tribal Traditional and Cultural Use and Tribal Subsistence Fishing Use designations. These designations could not be more necessary. Tribal traditional stewardship of and interdependence with the species that live in local waterways has been constant in California since time immemorial. It is time that regulations recognize, respect, and protect the oldest beneficial uses of water in the state.			
Response: Thank you for your comment and statement of support.			

LADWP1

Author: Katherine Rubin **Title:** Manager, Wastewater Quality and Compliance Group **Organization(s):** Los Angeles Department of Water and Power

Address: 111 Hope Street, Los Angeles, CA 90012-2607 **Interest Group:** Point Source & Storm

Date: 2/17/2017

Contact person: Chloe Grison **Phone:** (213) 367-1339 **E-mail:** [Click here to enter text.](#)

Letter: LADWP1, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Los Angeles Department of Water and Power (LADWP) would like to thank the State Water Resources Control Board (State Board) for the opportunity to comment on the Proposed 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 Mercury Provisions (Mercury Provisions). ¹			
Response: Comment noted.			
Letter: LADWP1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: summary
LADWP is the largest municipally owned utility in the nation, which serves a 465 square mile area in Los Angeles with approximately 4 million residents and a portion of the Eastern Sierras in Owens Valley. Its mission is to provide essential public services (water and power) for grid reliability and public health and safety in an efficient, cost-effective, and environmentally responsible manner. LADWP owns its electrical generation, distribution, and transmission systems as well as its 233-mile gravity fed Los Angeles Aqueduct, which brings water to the City of Los Angeles (City). LADWP’s Power System supplies more than 23 million mega-watt hours (MWh) of electricity a year, and LADWP is responsible for maintaining and replacing 3,507 miles of overhead transmission circuits spanning five Western States. LADWP’s Water System supplies approximately 177 billion gallons of water annually and an average of 446 million gallons per day to its residential and business customers. The water supply consists of local groundwater, imported water, recycled water, storm water, and the Los Angeles Aqueduct. Both the Water System and Power System include significant amounts of infrastructure to ensure the safe and reliable delivery of water and power in an environmentally responsible manner.			

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Response: Comment noted.			
Letter: LADWP1 2, Pg2, P1	NOT COMMENT	Excerpt: 3	Type: Summary
LADWP has multiple facilities subject to NPDES discharge permits, including its power generation facilities that employ once-through cooling and its critical hydroelectric plants. LADWP also has a number of reservoirs, the management of which would likely be affected by the proposed policy. LADWP's comments on the Report are as follows:			
Response: Comment noted.			
Letter: , LADWP1 Pg2, P2	COMMENT	Excerpt: 4	Type: Description of Reg
Background sources and their contribution to mercury levels. Background sources of mercury are the predominant sources of mercury in contaminated water bodies in California. The Staff Report associated with the Mercury Provisions (Staff Report) indicates that historical mining, natural soils, and atmospheric deposition are "significant" and "major" sources of mercury. ² The Staff Report notes that "the median and average mercury concentrations in rain in California were 6 ng/L and 12 ng/L" and "the 99.8 ¹ percentile of mercury concentrations in rain in the United States was 174 ng/L. Thus, a significant fraction of rain samples in California would have concentrations higher than these values, which are equivalent to, or higher than, the proposed effluent limitations for point source discharges (12 ng/L, 4 ng/L, and 1 ng/L; see below). The Staff Report also indicates that "[m]ercury deposition from atmospheric emissions is thought to be the major source of mercury in some Southern California lakes and reservoirs (U.S. EPA 2012, Tetra Tech 2008)." ⁴			
Response: Comment noted			
Letter: LADWP1, Pg2, P3	COMMENT	Excerpt: 5	Type: Description of Reg
In contrast, point sources generally contribute very little mercury to contaminated water bodies by comparison. For example, Table N-11 from Appendix N indicates that wastewater and industrial discharges constitute 4% of methylmercury discharged to the Delta and 1.5% of total mercury discharged to San Francisco Bay-two water bodies for which mercury-related TMDLs have been developed. ⁵ Because mercury sources attributable to NPDES discharges are small compared to the dominant sources in the state, imposing stringent effluent limitations on NPDES dischargers will not result in a significant reduction in water body or fish concentrations. As a result, effluent limitations would not seem to be an effective way to reduce mercury concentrations.			
Response: The Delta and the San Francisco Bay both have some of the highest mercury loads from historic gold and mercury mining. Therefore, the Delta and the San Francisco bay are outliers and should not be used as an example to show that point sources, such as industrial sources and POTWs are not significant contributors to mercury in waters throughout the state. Many point source discharges throughout the state are into effluent dominated waters where contribute nearly the entire mercury load. In mercury impaired waters, such as the San Francisco Bay and the Delta, a waste load allocation can be used to determine if point sources are significant contributors to the mercury impairment and appropriate effluent limits can be assigned. For unimpaired waters, studies were used to determine appropriate effluent limit translators for point sources to insure that the unimpaired status is maintained.			

Letter: LADWP1 , Pg3, P1	COMMENT	Excerpt: 6	Type: Compliance
<p><u>Background sources and methods of compliance.</u> The fact that background sources of mercury are the dominant sources of mercury in contaminated water bodies should be considered in the determination of discharger compliance with the proposed Mercury Provisions. As noted, evaluating compliance according to strict effluent limitations while background sources are the dominant sources of mercury in a water body does not appear to be a true measure for compliance. LADWP recommends that the Mercury Provisions be revised to include language that explicitly allows Regional Boards to establish methods of compliance other than meeting strict effluent limitations in cases where background sources are dominant.</p>			
<p>Response: Please see Responses to Comments ACWA1-16 and WSPA2-54.</p>			
Letter: LADWP1 , Pg3, P2	COMMENT	Excerpt: 7	Type: Attainability/Objectives
<p><u>Proposed numeric effluent limitations may be unattainable.</u> As discussed in Section 2 of the Staff Report, the proposed water quality objectives for mercury are expressed as fish tissue concentrations. These fish tissue concentrations are "translated" into water column concentration targets that would be used to evaluate "reasonable potential" and to derive effluent limitations for point source discharges. As noted above, the water column concentration targets are 12 ng/L, 4 ng/L, and 1 ng/L, depending on the beneficial use and flow characteristics of the receiving water. The Staff Report acknowledges that many point source dischargers would need to perform major upgrades in order to achieve the 4 ng/L concentration,⁶ but even these major upgrades would not guarantee that the 4 ng/L concentration could be achieved.⁷ Moreover, the 1 ng/L effluent limitation proposed for slow-moving water bodies with a Tribal Subsistence (T-SUB) Fishing designation is likely to be unachievable without extraordinary treatment upgrades. HDR's review of treatment technologies states, "[t]here is limited information available about achieving ultralow effluent mercury concentrations near the 5 ng/L range."⁸ The treatment process that appears most likely to be able to meet the proposed 1 ng/L effluent limitation are microfiltration and reverse osmosis (MF/RO), and then only under optimal conditions where input concentrations are low.⁹ Under these circumstances, OR found that dischargers could achieve mercury effluent concentration in the range of 1.2 to 3 ng/L.¹⁰ The level of treatment needed to meet the most stringent effluent limitations is not discussed by the Mercury Provisions.</p>			
<p>Response: Please see Responses to Comments WSPA2-26, 61, and ACWA1-105</p>			
Letter: LADWP1 , Pg3, PY3	COMMENT	Excerpt: 8	Type: Cost of Compliance
<p><u>Determination of costs in order to meet implementation requirements.</u> The overall costs associated with the implementation requirements of the Mercury Provisions are likely to be greater than the estimates developed by the State Board. Most available cost estimates discuss only wastewater treatment. Appendix R of the Mercury Provisions estimates the cost of upgrades from secondary to tertiary treatment that would be required by the policy to be in the range of \$9-15 million/year over 20 years. LADWP believes this range significantly underestimates upgrade costs. For example, Sacramento Regional San-a POTW with a design flow rate of 181 million gallons per day (mgd)-is currently upgrading from secondary to tertiary treatment at a capital cost of approximately \$2 billion and \$50 million/year in Operations & Maintenance thereafter.¹¹ These estimates for a single plant are above the Board's total estimate for all plant upgrades in the State. Given that advanced treatment (e.g., MF/RO) may be necessary to achieve the 1 ng/L limitation, costs may be far higher. OR suggests that the capital cost of upgrading a plant from secondary to advanced treatment (MF/RO) would be on the order of \$15-\$162 per gallon per day (gpd) of treatment capacity, depending on the size of the plant to be upgraded.¹² This range is one to two orders of magnitude higher than the Board's estimate of \$1.14 per gpd to upgrade to</p>			

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tertiary treatment. ¹³			
Response: Please see Response to Comment WSPA2-63.			
Letter: LADWP1 , Pg4, P1	COMMENT	Excerpt: 9	Type: Cost of Compliance
For LADWP, the costs may be higher still. LADWP is currently investing in generating station upgrades to eliminate once through cooling at its coastal generating stations. LADWP believes that mercury would be present in the intake water that flows through these plants, and is not added by the equipment or processes at the generating stations or at its hydroelectric plants. In addition, the flow rates through these facilities exceed the flow rates at most wastewater treatment plants, such that if treatment is required to meet the proposed stringent effluent limitations, costs would be far higher than are disclosed in the proposed policy.			
The Provisions have been revised to include a permissible exception for to the reasonable potential analysis that would apply to once through cooling (Chapter IV.D.2.e.3).			
Letter: LADWP1 , Pg4, P2	COMMENT	Excerpt: 10	Type: Reservoirs
LADWP's reservoirs and lakes may also have requirements imposed upon them as a result of the proposed policy. Although the proposed policy would develop water quality objectives that would apply to lakes and reservoirs, the implementation requirements for these objectives are not disclosed in the proposed policy, as there is a separate State Water Board project to develop TMDLs and implementation measures for mercury in lakes and reservoirs. (We are uncertain of the timeline for the proposed lakes and reservoirs policy, but it is scheduled to be adopted after the proposed Mercury Provisions.) Thus, LADWP does not know the extent of the impacts the proposed policy may have on these facilities, or the impacts of potential implementation measures on LADWP's operations.			
Response: Please see Responses to Comments MerCID1-54, and ACWA1-180.			
Letter: LADWP1 , Pg4, P3	COMMENT	Excerpt: 11	Type: IGP-NAL
Finally, LADWP has stormwater permits at many of its facilities. For facilities covered by the Industrial General Permit (IGP), action levels will be reduced under the proposed policy from 1400 ng/L to 300 ng/L. The Staff Report states that existing control measures "may not be sufficient to meet the revised Numeric Action level for mercury and, therefore, those dischargers affected are likely to incur incremental costs in order to come into compliance with the proposed policy. Due to the site-specific nature of these controls, we are unable to develop specific cost estimates associated with the incremental control activities." ¹⁴ Similarly, the Staff Report does not appear to include any discussion of the control measures or costs that may be required to comply with the stringent effluent limitations that would apply to industrial facilities with individual permits that include process water and/or storm water, despite determining that there are approximately 151 industrial facilities in the state that would be regulated under the proposed policy. ¹⁵			
Response: Since the proposed 300ng/L is a Numeric Action Level (NAL), exceeding that concentration is not a permit violation. Dischargers with mercury as a potential pollutant in storm water would be required to perform the Exceedance Reponse Actions (ERA) if the NAL is exceeded. In the ERA process there are multiple options one can take to reduce the mercury from being discharged or they can make the claim that the mercury is from a Non-industrial Source or Natural Background Source relieving them from the liability of high levels of mercury in their discharge. Dischargers can also make the claim that they already doing as much as they can to remove the mercury and cannot afford costly treatment control BMPs. This process is available to Dischargers now.			

Letter: LADWP1 , Pg5, PY1	COMMENT	Excerpt: 12	Type: Cost of Compliance
LADWP respectfully requests that the State Board perform analyses of the treatment measures and costs that are anticipated for generating stations, lakes and reservoirs, and industrial facilities.			
Response: Please see Responses to Comments ACWA1-70, and WSPA2-2. Also, please see Appendix R of the Staff Report.			
Letter: LADWP1 , Pg5, PY2 - 3	COMMENT	Excerpt: 13	Type: TMDLs
<p><u>Implications of the Mercury Provisions for existing TMDLs.</u> The State Board has suggested in public meetings that the Mercury Provisions would not affect existing TMDLs in a significant way, and the Staff Report states, "The implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established."¹⁶ However, LADWP is concerned that the Mercury Provisions and new beneficial uses may in fact influence existing TMDLs and will lead to more stringent TMDL and implementation requirements in TMDLs scheduled to be adopted in the future. As stated in the Staff Report, the proposed "Tribal Subsistence Fishing [T-SUB] Water Quality Objective was derived to protect humans consuming four to five meals per week (142 grams per day),"¹⁷ and the default fish consumption rate for the Subsistence Fishing (SUB) objective is also 142 grams per day.¹⁸ This fish consumption rate is more than four times higher than the rate used to derive the Sport Fish Water Quality Objective (32 grams per day). As a result, the proposed Tribal Subsistence Fishing Water Quality Objective (0.04 mg/kg) is considerably lower than the Sport Fish Water Quality Objective (0.2 mg/kg).</p> <p>In cases where the T-SUB and SUB beneficial uses are designated, existing TMDLs for bioaccumulative pollutants (e.g., DDT or PCBs) are likely to be reopened to incorporate waste load allocations (WLAs) calculated using the new higher fish consumption rates. Thus, changes to existing TMDLs are anticipated for a wide range of pollutants, not just mercury, based on the higher fish consumption rates associated with the SUB and T SUB beneficial uses.</p>			
Response: In regards to future TMDLs, please see Response to Comment CIEAEtA11-5. In regards to other pollutants, please see Response to Comment WSPA2-20.			
Letter: LADWP1 , Pg6, P1	COMMENT	Excerpt: 14	Type: Guidance/Language Suggestion
<p><u>LADWP recommends the development of additional implementation guidance for Regional Boards.</u> Because point sources are generally much smaller sources of mercury to the environment than historical mines, atmospheric deposition, and soils and sediments, LADWP recommends that the State Board develop alternatives to effluent limitations for mercury in point sources. However, if effluent limitations continue to be required, LADWP encourages the State Board to develop additional guidance on implementation for Regional Boards. Consistent with the State Board's Order No. 2001- 006, site-specific factors should be assessed in determining both the need for effluent limitations and the methods by which those limitations, if needed, should be calculated. The State Board should develop guidance on the following:</p> <ul style="list-style-type: none"> • The kind of site-specific information that should be used to assess whether point source controls will have a significant impact on mercury concentrations in water and fish. 			

<ul style="list-style-type: none"> • The information that should be used to determine if a discharge is to "slow moving" waters. • The use of mixing zones and dilution credits. 			
Response: Please see Responses to Comments WSPA2-8, and 81.			
Letter: LADWP1 , Pg6, P2	COMMENT	Excerpt: 15	Type: Alternative Compliance
<p><u>Development of compliance alternatives.</u> Given that the proposed effluent limitations would likely be unachievable for many point source dischargers, LADWP recommends that clear compliance alternatives be developed as part of the Mercury Provisions. For example, LADWP suggests that the State Board consider programs to address non point sources and/or programs to implement regional or watershed-based implementation measures for non-point sources. These alternative compliance measures would be crucial in cases where strict compliance with the proposed effluent limitations would be unachievable, would entail inordinate compliance costs, or would not result in a significant reduction of environmental mercury concentrations.</p>			
Response: Please see Response to Comment WSPA2-22.			
Letter: LADWP1 , Pg6, P3	COMMENT	Excerpt: 16	Type: Variance Policy
<p><u>Development of a statewide variance policy.</u> On August 21, 2015, U.S. EPA published water quality standards regulation (80 FR 51010), which includes water quality standards variances (40 CFR § 131.14). This regulation authorizes states to implement variances in cases where the highest attainable condition of the receiving water does not meet the applicable water quality standard. In such cases, the variance becomes the water quality standard used by permitting authorities in generating effluent limitations for discharges regulated by NPDES permits. Given that the proposed Mercury Provisions, as currently written, require mercury effluent limitations that are likely unattainable for certain dischargers and water bodies (see below), the use of variances by Regional Boards is necessary to prevent chronic violations of permit terms and inordinate penalties associated with such violations. Although the State Water Board has proposed a statewide Variance Policy in association with its adoption of water quality standards for bacteria, there is currently no established statewide mechanism for water quality standards variances; only the Central Valley Regional Board has adopted a variance for salinity.¹⁹ If the State Board elects to adopt the Mercury Provisions as they are, LADWP recommends that the Board adopt a statewide variance policy <i>concurrently</i> with the Mercury Provisions.</p>			
Response: Please see Response to Comment WSPA2-70.			
Letter: LADWP1 , Pg7, P1	NOT COMMENT	Excerpt: 17	Type: Beneficial Uses
<p><u>LADWP recognizes the discussions regarding the establishment of the Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) Beneficial Uses in the Mercury Provisions,</u> and that these Beneficial Uses are an important step forward in addressing the comments and concerns of subsistence fishers in California, as voiced at the recent public hearing associated with the Mercury Provisions.</p>			
Response: Thank you for your support. Comment noted.			
Letter: LADWP1 , Pg7, P2	COMMENT	Excerpt: 18	Type: Beneficial Uses
<p><u>Language used to define new Beneficial Uses should be clarified.</u> On p. 6, the Staff Report defines the proposed Tribal Tradition and Culture Beneficial Use (CUL) as follows:</p>			

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"Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials."

LADWP recommends that the State Board's understanding of "traditional rights or lifeways" be further explained in order to clarify this definition. For example, it would be helpful if the policy listed some of the "traditional rights" in view with the definition. Similarly, an enumeration of the specific California Native American Tribes would help dischargers anticipate more clearly the scope of the proposed policy and the geographic extent over which the proposed beneficial use might be applied.

Response: Please see Response to Comment CVCWA1-35. 4.10 discusses uses of some traditional uses of water, lifeways is defined in the glossary contained in the Provisions. The California Native Heritage Commission maintains a list of CA Native Tribes and their locations.

Letter: LADWP1 , Pg7, P3	COMMENT	Excerpt: 19	Type: Beneficial
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Finally, although the Staff Report states at p. 6 that the function of the tribal subsistence fishing (T-SUB) and subsistence fishing (SUB) beneficial uses "is not to protect or enhance fish populations or aquatic habitats," LADWP requests that this language be added to these definitions to avoid misapplication of these uses in the future.

The Provisions have been so revised (Chapter II).

Letter: LADWP1 , Pg8, P1	COMMENT	Excerpt: 20	Type: BUs/Policy Guidance
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The nature of the proposed new Beneficial Uses should be clarified, and additional implementation guidance should be provided. According to the federal definition of an "existing use" for a given water body, two conditions must be satisfied: (1) activities indicative of the use must have occurred since November 28, 1975, and (2) the water quality must have been sufficient to support the beneficial use since that date. State Board staff confirmed at the January 9, 2017 workshop that many "existing uses" designated in the State's Basin Plans are not existing uses per the Clean Water Act; State Board staff also clarified that the water boards have the discretion to allow longer compliance schedules for past, present, or probable future beneficial uses as designated pursuant to the requirements of the Porter-Cologne Act (California Water Code).²⁰ Although the Staff Report states that "beneficial uses may be designated as a goal use (or probable future use in Porter-Cologne parlance) where neither the water quality is currently being attained or the use is actually occurring, but there is evidence to indicate that the use would be a probable future use,"²¹ the Staff Report does not discuss the additional implementation options that should be available for "goal uses." LADWP respectfully suggests that the Mercury Provisions be revised to provide guidance on the designation of proposed beneficial uses, and to identify and provide guidance on the range of implementation actions that will be necessary to achieve meaningful reductions in mercury concentrations in the state's waters and fish.

Response: Please see Responses to Comments WSPA2-8, 34, and MerCID1-64.

Letter: LADWP1 , Pg8, P2	COMMENT	Excerpt: 21	Type: Environmental Impacts (SED).
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<p>The effects and environmental impacts of the proposed policy should be more completely explained. As suggested above, in the discussion of the implications of the Mercury Provisions for existing TMDLs, the effects of the proposed policy are anticipated to include the establishment of new water quality objectives and effluent limitations for point source dischargers for bioaccumulative pollutants in addition to mercury. As a result, the policy is expected to result in much higher costs to dischargers and ratepayers than are disclosed in the proposed policy and staff report, and is expected to have environmental impacts that are not explained in the substitute environmental documentation (SEO). For example, as noted above, it is likely that certain point source dischargers will need to employ advanced treatment (MF/RO) to satisfy some of the proposed effluent limitations. The proposed effluent limitations are expected to result in additional costs, power needs, and greenhouse gas generation.²² Impacts of increased power use and greenhouse gas emissions are not considered in the SED, and no mitigation measures are offered for this potentially permanent, long term additional source of greenhouse gases.²³ Thus, LADWP recommends that effects and impacts such as these be fully explained in the policy.</p>			
<p>Response: Please see Responses to Comments WSPA-9 and 45.</p>			
Letter: LADWP1, Pg9, P1	COMMENT	Excerpt: 22	Type: Flow
<p>Clarity is needed regarding additional potential impacts of the proposed policy. The new proposed beneficial use designations may trigger requirements applicable to in-stream flows, which may in turn affect LADWP's operations of its water system. Although Board staff indicated that it is not their intention, LADWP believes that these are reasonably foreseeable outcomes of the policy as currently proposed. LADWP requests that the State Board provide additional workshops and opportunity for State Board staff to work with stakeholders to investigate these issues, and to develop modifications to the proposed policy as needed to address these concerns and craft policy language that would ensure that Board staff's intentions and the scope of the proposed policy are clarified.</p>			
<p>Response: Regarding instream flows and future outreach on this topic, please see Responses to Comments ACWA1-12, 33, and MerclD1-58.</p>			
Letter: LADWP1, Pg9, P2	COMMENT	Excerpt: 23	Type: More Time
<p>Given the short time for comments and limited workshops, many issues that would benefit from additional analysis prior to adoption have not been fully explored. LADWP would appreciate the opportunity to work with the State Board to explore and develop a more workable policy that focuses on implementation measures that would produce a meaningful reduction in the ambient concentrations of mercury in the environment.</p>			
<p>Response: Please see Response to comments WSPA2-2 and 18.</p>			
Letter: LADWP1, Pg9, P3	NOT COMMENT	Excerpt: 24	Type: Greet/Ending
<p>LADWP appreciates the opportunity to provide comments on the Report and looks forward to working with the State Board staff in finalizing the Report. Should you have any questions regarding this letter, please contact me at (213) 367-0436 or Ms. Chloe Grison of the Wastewater Quality and Compliance group at (213) 367-1339.</p>			
<p>Response: Comment noted.</p>			

CICWQ3**Author:** Mark Grey **Title:** Technical Director **Organization(s):** Construction Industry Coalition on Water Quality**Address:** 2149 E. Garvey Ave., Suite A-11, West Covina, CA 91791 **Interest Group:** CONSTR & Industry**Date:** 1/20/2017**Contact person:** Mark Grey **Phone:** 951-781-7310, ext. 210 **E-mail:** mgrey@biasc.org

Letter: CICWQ3, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Greeting/beginning
<p>On behalf of the Construction Industry Coalition on Water Quality (CICWQ), thank you for the opportunity to provide comments on the proposed 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 Mercury Provisions (Provisions) released for public review on Jan. 3, 2017. For the reasons discussed below and so that we may provide complete, comprehensive, and informed comments to the State Water Resources Control Board (State Water Board) on the Provisions and the 700-page, and very complex Staff Report, we are requesting that:</p>			
Response: Comment noted.			
Letter: CICWQ3 Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time/Schedule
<ul style="list-style-type: none"> • The State Water Board should work with U.S. Environmental Protection Agency (EPA) to obtain the automatic extension afforded by Section XI.A. of the Consent Decree: Our Children’s Earth Foundation v. U.S. EPA, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (requiring EPA’s promulgation of mercury water quality criteria for the protection of aquatic life) (Consent Decree); • The State Water Board hearing scheduled for February 7 should be converted to a second workshop for the Board and staff to consider the Staff Report and answer stakeholder questions, which will allow sufficient time for the public to review the voluminous Staff Report and pose important questions for staff to answer and the Board to consider1; • A 60-day extension of the written comment due date (from February to at least April 17, 2017) should be granted to allow full review of, and preparation of informed comments on, the Staff Report by stakeholders and technical experts; 			

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- The State Water Board hearing for consideration of the Provisions should be postponed until May 2017 to assure that the Board has an opportunity to consider written as well as verbal comments of the public on the proposed Provisions;
- An additional opportunity for submission of written public comments on any revisions to the proposed Provisions and Staff Report should be provided prior to a final State Water Board hearing to consider adoption of the Provisions; and
- The State Water Board hearing to consider adoption of the Provisions should be postponed to September 2017 to accommodate an informed, transparent, and robust public process regarding the Proposed Provisions.

As you are aware, not only does the Staff Report exceed 700 pages in length, containing 21 technical appendices, it also introduces, develops, explains, analyzes, and evaluates the water quality effects, environmental effects, and economic impacts of a new far-reaching statewide regulatory program, comprised of three new beneficial use designations, five new mercury water quality objectives, and an implementation program.

The implementation program includes, among other things, new requirements for MS4 and Industrial stormwater NPDES permits, and an amendment of the State Implementation Plan requiring incorporation of new, very stringent mercury numeric effluent limits into NPDES permits for POTWs and other non-stormwater discharges. These NPDES permit requirements and effluent limits will be enforceable by water boards and third party citizen suits, creating significant risk of enforcement liability for dischargers, but the Staff Report and Provisions do not set forth a clear path for compliance. Development of each of the components of the Provisions evaluated in the Staff Report involves analysis and application of highly technical data and information sources – a fact readily acknowledged by the State Water Board staff at, and cited as the very reason for holding, the January 9, 2017 workshop. Indeed, in the workshop State Water Board staff noted on several occasions the length of the Staff Report, the complexity of the technical arguments and analysis in the Staff Report, the “jigsaw puzzle” character of the proposed Provisions, and the very short amount of time available to review the Staff Report.

In light of these facts, the expedited rulemaking schedule does not provide sufficient opportunity for public participation by interested parties. At the January 9, 2017 workshop, staff presented the following schedule for State Water Board adoption of the Provisions:

Public comment period:	January 3 – February 17, 2017
Public workshop:	January 9, 2017
State Water Board hearing:	February 7, 2017
State Water Board meeting/considered for adoption	May 2017
Consent Decree deadline for EPA to propose mercury criteria	June 30, 2017

The schedule is deficient in the following respects: (a) The schedule allows for only one workshop, which was scheduled only three working days

after release of the 700-page Staff Report, depriving the public of a reasonable period of time to complete preliminary review of the document and formulate questions prior to the workshop; (b) It allows for only one public comment period; there is no opportunity for written comments on revised proposed Provisions after receiving initial public comments, but prior to State Water Board consideration of adoption; (c) A total of only five weeks following the workshop are available to the public to review and prepare written comments on the voluminous, highly technical, and complex Staff Report analysis, which requires multi-discipline technical review (including review by, among others, water quality, toxicology, and economic experts) ; and (d) The schedule includes only one Board hearing, which appears to be insufficient to assure that the State Water Board is apprised of technical, legal and policy issues that the public is likely to raise regarding the Provisions, including the stringency versus the likely effectiveness of proposed implementation program measures and controls.

We understand that the State Water Board has scheduled the adoption of the proposed Provisions for May 2017 to meet the June 30, 2017 deadline for the EPA to propose or approve the State Water Board’s numeric water quality criteria (objectives) for mercury to protect aquatic life and aquatic-dependent wildlife. See, Consent Decree: Our Children’s Earth Foundation v. U.S. EPA, No. 3:13 cv-2857-JSW (N.D. Cal. Aug. 25, 2014) (hereinafter, Consent Decree). However, there are at least two other ways for EPA to comply with the Consent Decree without the State Water Board’s adoption of the proposed Provisions in the spring of 2017 according to its current schedule:

- EPA can file a motion requesting an extension of the June 30, 2017 date under section XI.A. of the Consent Decree, which provides for one automatic extension where the requested extension period is at least 30 days and the requisite notice provisions are met. See, Consent Decree, ¶ 35.
- EPA may promulgate aquatic life mercury water quality criteria by June 30, 2017 as contemplated in the Consent Decree. The State Water Board could then follow up that action with adoption of an implementation program for aquatic life criteria
- and with new human health related mercury water quality objectives, implementation measures, and definitions of proposed beneficial uses after those proposals have been properly vetted in public hearings and commented upon by interested parties.

We appreciate that it is the State Water Board’s preference, as indicated by staff at the workshop, to promulgate the mercury water quality objectives, instead of EPA, so that it can develop concurrently a program of implementation. We generally support the State Water Board’s preference, and recognize the potential advantages in designing a comprehensive mercury program versus a piecemealed approach that would require multiple rulemakings. For this reason, we recommend working with EPA to request a minimum 3-month automatic extension of the June 30, 2017 Consent Decree due date, and the adjustments to the schedule for the public rulemaking process set forth above. To show the feasibility of our request to revise the rulemaking schedule to provide a robust and transparent rulemaking process, we provide an alternative conceptual schedule for the process in Attachment A of this letter.

A rulemaking of this magnitude, scope, complexity, and technical nature – not to mention the regulatory implications of the program which will likely extend far beyond regulation of mercury in light of the new beneficial use categories proposed – surely warrants more than five and one-half week total time of public review and comment, and more than a single workshop and Board hearing.

Response: Please see Response to Comment WSPA2-2.

Letter: CICWQ3 , Pg4, P17	NOT COMMENT	Excerpt: 3	Type: Greet/Ending
We appreciate your consideration of this request for an extension of the State Water Board’s comment period and adoption of the proposed Provisions. Should you or your staff have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org .			
Response: Comment noted			

WSPAETAI1

Author: None **Title:** None **Organization(s):** California Building Industry Association, California Chamber of Commerce, California Manufacturers & Technology Association, California Metals Coalition, California League of Food Processors, Industrial Environmental Association, Rural County Representatives of California, Western States Petroleum Association

Address: None **Interest Group:** INDUSTRY

Date: 2/3/2017

Contact person: Dawn Koepke **Phone:** 916-930-1993 **E-mail:** None

Letter: WSPAETAI1 , Pg1, P1	COMMENT	Excerpt: 1	Type: Split the Project
On behalf of the signatories to this letter, we must respectfully convey our concerns with the proposed Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives under the Inland Surface Waters, Enclosed Bays & Estuaries Plan. Based on the concerns further outlined below, we strongly urge the Board to bifurcate the two proposals going forward.			
Response: Please see Response to Comment WSPA2-3			
Letter: WSPAETAI1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
We are concerned that the current process and approach are problematic and the associated timeline contemplated for the proposal hasn't provided sufficient time for the regulated community to digest and understand the relevance and widespread impacts associated with the proposal. Bifurcating the approach, on the other hand, will provide the opportunity for the Board to respond to the USEPA Consent Decree for the development of the Wildlife Mercury Water Quality Objective by the June deadline, while providing sufficient time and opportunity for the regulated community to work with the Board to understand the highly technical proposal and the broad impacts it will have on the regulated community.			
Response: Please see Response to Comment WSPA2-2.			
Letter: WSPAETAI1 , Pg1, P3	COMMENT	Excerpt: 3	Type: Insufficient Pub Review
While we can appreciate that the State Water Resources Control Board (SWRCB) has been working on this proposal informally with USEPA and the tribal community for many years via the tribal consultation process and provisions, the regulated community will have had a mere 45 days to review, digest and begin to understand the broad impacts associated with the proposal and associated staff report (724 pages, no less). Further, despite the January 9th and February 1 st workshops, the regulated community is only just beginning to understand the gravity of the proposal ,			

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barely in time for the February 7 th Board hearing, and February 17th comment deadline and adoption late this Spring.			
Response: Please see Response to Comment WSPA2-2.			
Letter: WSPAEtAI1 , Pg2, P1	COMMENT	Excerpt: 4	Type: Support
Certainly, we appreciate the importance of considering tribal, tribal cultural and subsistence fishing practices relative to the use of waters of the state. Similarly, we understand the need to consider water quality objectives for mercury to protect the aquatic environment and the wildlife that depends upon it.			
Response: Thank you for your support			
Letter: WSPAEtAI1 , Pg2, P1	COMMENT	Excerpt: 5	Type: Request: More Time
That said, the pace at which the Board has set to consider these related, but highly distinct proposals is of great concerns as the impacts will be widespread and for the new beneficial uses, apply far more broadly than just for mercury. To the extent possible, the additional time to work with the Board by bifurcating the proposal could result in revisions that may help alleviate the regulated community’s serious concerns and provide sufficient time to develop detailed guidance for regional boards in designating waters with these new beneficial uses in a consistent, clear manner across the state.			
Response: Please see Response to Comment WSPA2-2.			
Letter: WSPAEtAI1 , Pg2, P2	NOT COMMENT	Excerpt: 6	Type: Greet/Ending
On behalf of the signatories to this letter, we appreciate your consideration of our request to bifurcate the proposal and look forward to continuing to work with the Board to address these significant issues of concern. If you have questions regarding the points raised in this letter, please contact Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.			
Response: Comment noted			

BlueLakeR1**Author:** Claudia Brundin **Title:** Tribal Chairperson **Organization(s):** Blue Lake Rancheria**Address:** P.O. Box 428, Blue Lake, CA 95525 **Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** Claudia Brundin **Phone:** 707-668-5101 **E-mail:** [Click here to enter text.](#)

Letter: BlueLakeR1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Support
Thank you for your efforts to protect communities that consume fish at higher than average quantities from harmful levels of contaminants.			
Response: Thank you for your comment and statement of support.			
Letter: BlueLakeR1 , Pg1, P1	COMMENT	Excerpt: 2	Type: BUs currently not protected
California’s current beneficial use designations result in water quality control plans and permits to pollute our waterways that do not adequately protect tribal communities or other communities that fish for subsistence purposes.			
Response: Comment noted			
Letter: BlueLakeR1 , Pg1, P2	COMMENT	Excerpt: 3	Type: Adopt Beneficial Uses
To address this problem, we urge you to:			
<ul style="list-style-type: none"> Adopt all three proposed beneficial use designations: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), Subsistence Fishing by the general population (SUB). 			
Response: We appreciate the Tribes’ support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.			
Letter: BlueLakeR1 , Pg1, P2	COMMENT	Excerpt: 4	Type: BUs: Tribal Input
<ul style="list-style-type: none"> Provide a clear process by which tribes may designate waters for cultural and subsistence fishing uses. 			

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Response: See Response to Comment CIEAEtA11 – Excerpt 7.			
Letter: BlueLakeR1 , Pg1, P2	COMMENT	Excerpt: 5	Type: Not Relevant to Provs
<ul style="list-style-type: none"> • Protect tribes from pollution originating off of tribal lands. 			
Response: The proposed provisions only address pollution in the form of mercury and methylmercury in fish tissue; is beyond the purview of the Proposed provisions to address other types of pollution that originate from tribal lands.			
Letter: BlueLakeR1 , Pg1, P2	COMMENT	Excerpt: 6	Type: Protect from lack of fish
<ul style="list-style-type: none"> • Protect tribal and subsistence communities from health impacts from lack of healthy fish. 			
Response: Please see Appendix T question 1			
Letter: BlueLakeR1 , Pg1, P3	NOT COMMENT	Excerpt: 7	Type: Greet/Ending
Thank you for your time. Please do not delay in adopting these beneficial uses!			
Response: Thank you for your support, comment noted.			

CalCIMA1**Author:** Adam Harper **Title:** Director of Policy Analysis **Organization(s):** California Construction and Industrial Materials Association**Address:** None **Interest Group:** CONSTR**Date:** 1/3/2017**Contact person:** [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)

Letter: CalCIMA1 , Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self-Description
The California Construction and Industrial Materials Association (CalCIMA) is a statewide trade association representing construction and industrial material producers in California. Our members supply the minerals that build our state’s infrastructure, including public roads, rail, and water projects; help build our homes, schools and hospitals; assist in growing crops and feeding livestock; and play a key role in manufacturing wallboard, roofing shingles, paint, low energy light bulbs, and battery technology for electric cars and windmills.			
Response: Comment noted			
Letter: CalCIMA1 , Pg1, P2	COMMENT	Excerpt: 2	Type: Insufficient Pub Review
The SWRCB has proposed significant changes to law which have potential impacts across the construction and mining industry. They appear to go well beyond the policy for reservoirs staff had outreached to us on and we require additional time to analyze and comment. We appreciate the additional workshop but a regulatory program of this scope and potential impact to private and state projects deserves more time to comment review and analyze.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CalCIMA1 , PgX, PY	COMMENT	Excerpt: 3	Type: Request: More Time
We fully support the requests made by ACWA, CASQA and others in the necessity of additional time to comment. We are appreciative of the efforts they took to show how it could be accomplished in light of the SWRCB’s legal obligations.			
Response: Please see Responses to Comments WSPA2-2, and 18.			

CalCIMA2
Author: Adam Harper **Title:** Director of Policy Analysis **Organization(s):** California Construction and Industrial Materials Association
Address: None **Interest Group:** CONSTR
Date: 2/16/2017
Contact person: Adam Harper **Phone:** 916-554-1000 Ext. 102 **E-mail:** None

Letter: CalCIMA2, Pg1, P1	NOT COMMENT	Excerpt: 1	Type: Self-Description
These comments are offered on behalf of the California Construction and Industrial Materials Association (CalCIMA). CalCIMA is a statewide trade association representing the construction aggregate, ready mix concrete and industrial minerals industries in California. Our members operate over 500 facilities statewide providing the raw materials to fuel California’s infrastructure needs as well as the needs of the construction, manufacturing and industrial sectors. We recognize the importance of protecting our States water quality but we also need a regulatory structure which our members can comply with and that achieves the objective of protecting our waters in an efficient manner.			
Response: Comment noted.			
Letter: CalCIMA2, Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
Request for Additional Time CalCIMA would first like to reiterate our request for additional time to analyze this proposal. The State Water Resources Control Board (SWRCB) has released a complex regulatory proposal with over 700 pages of supporting documentation and information. The proposal could have significant impacts on the development of mineral resources and on development throughout the State.			
Response: See Responses to WSPA2 – Excerpt 2 and ACWA1 – Excerpt 19.			
Letter: CalCIMA2, Pg1, P2	COMMENT	Excerpt: 3	Type: Mines
Mine operators may be regulated under multiple programs within the proposed implementation plan. Impacts of such regulation are not			

Responses to Comments—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 Mercury Provisions.

analyzed and clearly explained in the proposal, making the short review period particularly problematic.			
Response: The impacts of the proposed regulations have been analyzed and clearly explained in the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report). Section 6.9 of the Staff Report describes the issue of mining waste and how best to address it. NPDES and industrial discharge requirements are discussed in Chapter 6 and Appendices N and P of the Staff report. Section 7.2.1 of the Staff Report describes the reasonably foreseeable methods of compliance for mine operations. An analysis of environmental effects is presented in Chapter 8 of the Staff Report. In compliance with California Water Code section 13242, the Provisions includes a program of implementation in order to achieve the water quality objectives and monitoring and reporting requirements, as described in Appendix A. An analysis of the economic impact of the Provisions is included in section 10.1.4 and Appendix of the Staff report. Also, please see Responses to Comments WSPA2-2 and ACWA1- 19.			
Letter: CalCIMA2, Pg1, P3	NOT COMMENT	Excerpt: 4	Type: Mercury Source
Ubiquitous Nature of Mercury in Environment			
Much of the SWRCB’s supporting documentation for this proposal discusses the ever-present nature of mercury in the environment as a result of functions such as atmospheric deposition. The Report even observes that average total mercury concentrations in the state’s surface water exceeded 4ng/L (4.7 ng/L) between 2004 and 2012.			
Response: Comment noted.			
Letter: CalCIMA2, Pg1, P4	NOT COMMENT	Excerpt: 4	Type: Mercury Source
The proposal documentation contains other information concerning the complexity and scale of the conditions addressed, such as: “Inorganic mercury is available in most aquatic systems due to widespread atmospheric deposition. Therefore, any anoxic aqueous environment that is rich in organic matter and contains the conditions necessary for conversion of inorganic mercury to methylmercury can be said to be a potential source of methylmercury.” P.52			
Response: Comment noted			
Letter: CalCIMA2, Pg2, P1	COMMENT	Excerpt: 5	Type: Too stringent
Decision makers should be aware that Water Board staff believes organic mercury and methyl mercury can exist almost anywhere and everywhere within the state. And the state’s measured average over an 8 year period exceeds 4 ng/L, a level that will likely result in many new 303(d) listings and stringent permit limits, because that level is higher than several of the water column “translators” in the proposal (which are as low as 1 ng/l).			
Response: Comment noted. Chapter 4 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) describes			

Responses to Comments—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 Mercury Provisions.

the environmental setting in California, including a description of the sources and the current levels of mercury in the environment. Section 3.9 of the Staff Report explains the regulatory role of 303(d) listings and Chapter 6 of the Staff Report includes consideration of the effects of 303(d) listings relative to several regulatory issues pertinent to the Provisions.			
Letter: CalCIMA2, Pg2, P2	COMMENT	Excerpt: 6	Type: Question: How many?
The Report may be misleading because it focuses on certain areas of concern within the state, such as coastal mountain ranges, while not quantifying the percentage of the state’s surface waters existing in those areas. But the fundamental reality is this proposal would apply statewide. As we are not provided more time to analyze the proposed policy, we have numerous questions which appear unanswered in the report but which should be addressed based on information available to SWRCB.			
1. What portion of the state’s watersheds are expected to be impacted by each adopted objective for which beneficial uses have already been established?			
<p>Response: The report clearly states that:</p> <ul style="list-style-type: none"> • 2 mg/kg FTO applies to COMM, WILD wherever designated in the state. • SUB, T-SUB and CUL have not and are not being designated anywhere in the state by this rulemaking • CA Least Tern applies to the list where it says where CA Least Tern are. • Prey Fish applies where WILD, etc. exists and 0.2 mg/kg TL4 fish for COMM is not present. 			
Letter: CalCIMA2, Pg2, P2	COMMENT	Excerpt: 7	Type: Question: COMM
2. What portion of the state’s waters have a sport fishing beneficial use?			
<p>Response: The sports fishing or COMM beneficial use is considered one of the clean water act presumptive uses under Clean Water Act section 101(A)(2) and as such would apply to most surface waters in California absent the water boards developing a use attainability analysis to show that the use is not occurring.</p>			
Letter: CalCIMA2, Pg2, P2	COMMENT	Excerpt: 8	Type: Question: COMM
3. What 303(d) listed waters for mercury also have a sport fishing beneficial use?			
<p>Response: All of the mercury listed water bodies are listed based on exceeding a consumption threshold. Older listing inappropriately tied the impairment to the REC-1 beneficial use when the most appropriate beneficial uses would be COMM. The integrated report is being changed to reflect the COMM use and the use impaired by high levels of mercury in fish tissue as the report is updated.</p>			
Letter:	COMMENT	Excerpt: 9	Type: Question: COMM

Responses to Comments—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 Mercury Provisions.

CalCIMA2, Pg2, P2			
4. What specific areas of the state are expected to be defined as “AREAS WITH ELEVATED MERCURY CONCENTRATIONS”?			
Response: Please see attachment A of the Staff Report.			
Letter: CalCIMA2, Pg2, P3	COMMENT	Excerpt: 10	Type: Compliance
<p>“IMPLEMENTATION TAKING A CENTURY,” How is Compliance determined?</p> <p>The Report notes that “Human activity may prevent attaining the Mercury Water Quality Objectives for many species for the next century in many waters, but there is no way to know this for certain.” In addition, it notes, “Water Boards are required to ensure that all discharges, regardless of type, comply with all water quality control plans and policies.”</p> <p>The draft document takes some 700 pages describing a jumble of potential background and facts, eventually suggesting how Water Boards may comply in various programs, but leaving many questions concerning the full effect on dischargers and development in the State. The proposed Policy language in Appendix A leaves most areas to permitting agency discretion, and fails to actually create a clear path to achieving water quality objective or implementation plan compliance. It should be clearly stated that these actions create compliance for the discharger. For example, in Chapter IV.D.3:</p> <p style="padding-left: 40px;">“Chapter IV.D.3 applies to storm water dischargers regulated under general and individual NPDES STORM WATER permits issued pursuant to Clean Water Act section 402, subsection (p). The PERMITTING AUTHORITY shall include the requirements in Chapter IV.D.3.b in individual and general NPDES STORM WATER permits when adopting or re-issuing the permits.”</p> <p>The proposal describes requirements that “shall” be imposed, but does not explain the full range of measures that will be required of dischargers to address the new objectives and to protect the new beneficial uses. Does this mean the MS4 or industrial facility is subject to additional obligations not discussed, potential litigation etc? The general discussion of the 700 pages often makes it sound like one shall just have to do x y or z, then falls short of clearly stating x, y or z is compliance.</p> <p>Response: The Staff Report is 290 pages but also includes numerous supporting appendices, as the State Water Board Staff has many strict legal requirements to inform the public of the scientific research, regulatory requirements, environmental impacts, etc. that drive suggestions for public review and potential Board adoption.</p> <ul style="list-style-type: none"> Regarding the quoted text from the proposed Provisions, this is introductory text in the regulation that points to additional regulatory requirements that “shall” be included (not imposed); those index to those requirements is listed in the subsequent in-text reference in the same line that Commenter has quoted. [BUT APPARENTLY NOT READ] 			

<ul style="list-style-type: none"> As explained, the only regulatory actions prescribed are in Appendix A, which is the proposed regulatory language. The Staff Report and SED are legally required support documents for those regulations, but in of themselves contain no proposed binding regulations. 			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 11	Type: Language too broad
<p>Some of the Appendix A language is even more general, leaving nearly everything to Regional Board discretion. For example under nonpoint discharges the language is simply,</p> <p style="padding-left: 40px;">“The PERMITTING AUTHORITY has discretion under existing law to require dischargers to implement erosion and sediment control measures in WDRs or waivers of WDRs, and should consider requiring such measures in AREAS WITH ELEVATED MERCURY CONCENTRATIONS when adopting, re-issuing, or modifying a WDRs or waiver of WDRs.”</p> <p>Similarly general language is included for dredging activities and wetlands. The Staff Report observes that the Water Boards may amend existing 401 Certifications. In this context, we as industry wonder how we will demonstrate we don’t “Cause or Contribute” to a violation of stringent new water quality objectives.</p> <p>Response: The quoted proposed Provision simply means that the permitting authority, or the State and Regional Water Boards, which write industry’s permits, are able to use existing laws, which are presumably already well known to industry, to implement exactly what it says: erosion and sediment control measures.</p>			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 12	Type: Question: Achievable?
<p>For example,</p> <p>1. How can an NPDES discharger required to meet a compliance schedule of 10 years demonstrate compliance with levels board staff believes can’t be achieved in a century?</p> <p>Response: Please see Response to Comment ACWA1-119.</p>			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 13	Type: Question: Permitting?
<p>2. How will a NPDES discharger be able to get a permit and begin or continue their activity?</p> <p>Response: Proposed regulations do not change NPDES or state permitting application processes.</p>			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 14	Type: Question: CalTrans/Construction?

Responses to Comments—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 Mercury Provisions.

3. Why does Appendix A not specifically note that CalTrans work and Construction Permit compliance is considered compliance with the objectives as discussed in the chapters?			
Response: The Staff Report describes that these two permits already require enough to protect the environment from mercury.			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 15	Type: Question: CalTrans/Construction?
4. Why is sediment and erosion controls discussed as acceptable for remediation of historic gold and mercury mines, Caltrans and construction but not clearly said to be sufficient for industrial stormwater dischargers in general?			
Response: Mercury is often found naturally or in the background when performing land disturbance activities like construction activities including the development of new roads and highways. The mercury is often not added to the environment by the discharger while industrial stormwater dischargers could be adding new mercury to the environment depending on what kind of industrial activity they perform.			
Letter: CalCIMA2, Pg3, P2	COMMENT	Excerpt: 16	Type: Question: CEQA-Housing?
5. What is the impact on housing and other development in the coastal range areas where fill permits may be required?			
Response: Section 8.4.13 of the Staff Report describes the anticipated less-than-significant impact of the Provisions on population and housing, and Chapter 8.6 describes the less-than-significant impact on growth. Section 8.1.2 of the State Water Board’s Staff Report and Substitute Environmental Document (Staff Report) offers a detailed explanation of the level of environmental impact analysis performed and the regulatory basis of that analysis. The State Water Board is not required to engage in speculation or conjecture in order to evaluate site-specific and facility-specific approaches, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply. (Cal. Code Regs., tit. 14, § 15204, subd. (c)). Chapter 7 of the Staff Report includes an environmental analysis of the reasonably foreseeable methods of compliance with the Provisions as required by CEQA (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4); Pub. Resources Code, § 21159, subd. (a)). In developing the environmental analysis, the State Water Board is not required to conduct a site-specific project level analysis of the methods of compliance, but the environmental analysis shall account for a reasonable range of environmental, economic, and technical factors. (Cal. Code Regs., tit. 23, § 3777, subd. (c); Pub. Resources Code, § 21159, subd. (d)).			
Letter: CalCIMA2, Pg3, P3	NOT COMMENT	Excerpt: 17	Type: Support of other Comments
<u>Strong Support of CASQA Comments</u>			
Second, we would like to express our support and agreement with the written comments provided to the SWRCB by the California Stormwater Quality Association. These comments raise important issues regarding SWRCB obligations, and important changes to recommendations (such as			

Responses to Comments—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 Mercury Provisions.

those for Industrial Stormwater).			
Response: Comment noted.			
Letter: CalCIMA2, Pg3, P4	COMMENT	Excerpt: 18	Type: CEQA/Mines
There are, however, additional issues we need to address in regards to this proposal. First, the SWRCB needs to distinguish more clearly between historic gold and mercury mines, which directly contributed to the mercury issue, and the minerals industries of today. Second, the environmental analysis of the project must include an analysis of the program’s potential impact on current and future mining within California.			
Response: Please see Section 4.4.1 and Section 8.4.11 of the Staff Report. Also, see Figure 4-1.			
Letter: CalCIMA2, Pg4, P1	COMMENT	Excerpt: 19	Type: CEQA/Mines
<u>Clarification of Historic/Legacy Mining References vs Current Minerals Industries</u>			
<p>In some sections of the document, the SWRCB has done a good job of creating clarity between historic and current operations. Section 6.9 is a good example of a careful discussion that distinguishes impacts of historic from those of current mining. However, there are other references to mining made throughout the document that do not clearly differentiate between the historic legacy mining practices and current mining practices, and have the potential to inappropriately stigmatize current mineral operators. Specifically, the discussion in Section 4.4.1 Mining in California should be clearly presented as a historic discussion. Statements such as this one on page 47, “However, mining is not the only important source of mercury in California” should be modified to reference historic mining: “However, historic mining is not the only important source of mercury in California.” Further, when discussing geology on page 49 the staff report notes, “The mercury from mine waste, naturally enriched soils, and geothermal springs is a major source of mercury in the Coast Ranges, the Sierra Nevada Mountains, and also downstream in the Sacramento/San Joaquin Delta and San Francisco Bay.” This discussion should clarify that it refers to mine waste from historic mining, and that current mining practices do not contribute mercury to the environment.</p> <p>Mineral operations tend to be controversial projects, and statements taken out of context can have significant negative impacts within permitting processes and community perspectives crucial to mineral resource development. It is critically important the document not lend itself to misconstruction.</p>			
Response: Please see Section 4.4.1 and Section 8.4.11 of the Staff Report. Also, see Figure 4-1.			
Letter: CalCIMA2, Pg4, P3	COMMENT	Excerpt: 20	Type: 303(d) Listing

Industrial Stormwater Permit Eligibility and 303(d) Waters.

Industrial dischargers of stormwater within the state are required to have coverage under the industrial general stormwater permit or an individual discharge permit issued by their Regional Water Quality Control Board (RWQCB). Much of the mercury policy contains reference to control of mercury from sediments and the effectiveness of existing BMPs in that regard. However, when it comes to the discussion of industrial sources the SWRCB does not provide clarity on compliance measures required of industry, or describe how a new discharger will be eligible to commence discharges and obtain permit coverage.

This is exceedingly important as the Industrial stormwater permit has an obligation on new dischargers with direct discharges to 303(d)-listed water bodies qualify for permit coverage only after making one of three finding. Section 6.11 of the SWRCB draft staff report describes this challenge in detail, concluding simply that “[t]here are many mercury impaired waters throughout the state with no TMDL, where the lack of clarity for this requirement could cause a problem in how to determine compliance.” (Draft Staff Report, p. 139) However, the proposal does not resolve the issue. The draft Staff Report description of Option 4 (presumably, but not clearly, incorporated into recommended Option 5) asserts that,

“Because there would be no water column objective for mercury after the California Toxics Rule criteria are de-promulgated by U.S. EPA, compliance with the [newly proposed] mercury Numeric Action Level (300 ng/L) is sufficient for demonstration of compliance with mercury water quality objectives for coverage under the Industrial General Permit.”

However, the *actual proposed language* for the Policy, set forth in Appendix A, does not refer to new dischargers at all. There is a single sentence relating to industrial stormwater, stating only that the existing Industrial General Permit Numeric Action Level for mercury will be made nearly 5 times more stringent, dropping it from 1400 ng/l to 300 ng/l.

Response: Please see Response to Comment CASQA2-26.

Letter: **CalCIMA2**, Pg5,
P1

COMMENT

Excerpt: 21

Type: New Industrial SW permits

The proposed policy language does not dictate that showing a new discharge will contain mercury below the Numeric Action Level will qualify it for permit coverage -- how they would have thereby shown their discharge meets mercury water quality objectives at the point of discharge. It also does not address how new dischargers could qualify for individual stormwater permits (without the action level provisions) where that is a Water Board preference for a particular facility.

Response: This is only the case for dischargers that would be discharging to a 303(d)listed waterbody. According to the Federal Regulation a New Discharger is defined as a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source as defined in 40 Code of Federal Regulations 122.29, and which has never received a finally effective NPDES permit for discharges at that site. The Federal Regulations go on to say that there shall be no new sources of a pollutant for which the water

body is impaired. This will be determined in the same way as any other pollutant under the Industrial General Permit.			
Letter: CalCIMA2 , Pg5, P2	COMMENT	Excerpt: 22	Type: WQO.
The policy documents do not discuss how many facilities are expected to discharge mercury at levels above or below 300 ng/l, such that even adding express language allowing coverage for new discharges below that level would affect the industry. Atmospheric deposition and soil mercury content may make ordinary, reasonably controlled runoff from industrial areas exceed levels considered to contribute to impairments based on the very low new water quality objectives. Even if a facility is permitted to technically demonstrate these background conditions are the cause of mercury levels, such demonstrations can be prohibitively costly and time consuming.			
Response: The proposed 300 ng/L is not an effluent limit but a Numeric Action Level (NAL) and it will act the same as any other NAL in the Industrial General Permit as it currently exists.			
Letter: CalCIMA2 , Pg5, P2	COMMENT	Excerpt: 23	Type: Economics
Further, the new beneficial uses and water quality objectives will lead to expansion of 303(d) listed water bodies. The additional potential cost to industry and development, as well as the burden on the Water Boards managing this problem, would be immense without much benefit, since the report generally concludes that the existing BMP system for sediment control provides effective water quality control.			
Response: Should a waterbody still become impaired for mercury, the beneficial uses through the 303(d) process, despite the proposed water quality objectives as applied to individual discharges, the waterbody would eventually be subject to a total maximum daily load (TMDL). In this case, a waste load allocation (WLA) would be applied to point-source discharges, and the WLA for these discharges would be determined by the proportion of total load of mercury contributed by point source discharges to the waterbody. If the proportion of the load contributed to the waterbody by point-source discharges is small, then the corresponding WLA would also be small, and the effluent limitations assigned to discharges from point sources large relative to that of other sources.			
Letter: CalCIMA2 , Pg5, P3	COMMENT	Excerpt: 24	Type: Language Recommendation
We recommend that in Appendix A, where the SWRCB notes implementation actions under the industrial Stormwater Permit, the SWRCB should also require a future modification to the Industrial Stormwater Permit to include explicit language that new industrial dischargers in Areas with Elevated Mercury Concentrations would still be eligible for coverage under the Industrial Stormwater Permit, and that coverage for these and other new dischargers would not require demonstration that they comply with the new mercury water quality objectives at the point of discharge.			
Response: New Dischargers under the Industrial General Permit will still be required to show that they will not be causing or contributing to the exceedance of a Water Quality Objective. If the facility discharges to a 303(d) listed impaired water body, they must show that they will not be contributing additional pollutants for which the water body is impaired. This requirement comes from the Federal Regulations and cannot be changed through this process. Also, there are no “new mercury water quality objectives” that industrial storm water dischargers must meet at the end of pipe.			

Letter: CalCIMA2 , Pg5, P4	COMMENT	Excerpt: 25	Type: No Path for Compliance
In addition, the proposal must more clearly define the means to compliance with industrial Stormwater Permit receiving water limits. Otherwise, industrial facilities will be in perpetual jeopardy of enforcement and have no compliance end goal to reasonably plan for.			
Response: Compliance with the NAL would equal compliance with receiving water limitations (for mercury). There is not a description in the Industrial General Permit for any other pollutants defining means to compliance.			
Letter: CalCIMA2 , Pg5, P5	Choose an item.	Excerpt: 26	Type: SED/CEQA
<u>Environmental Analysis of Mineral Resources</u>			
Documentation supporting the draft proposal contains inadequate analysis of its impacts on mineral resources. It contains only one observation on page 227 of the staff report, which focuses exclusively on gold and silver mining and potential wastewater treatment from gold, silver and mercury mines, which to a large extent no longer exist within the state. This is a flawed analysis which does not analyze nor discuss the rule's potential impact on current and future mining within the State of California. California ranked sixth among the states in non-fuel mineral production in 2014 and has approximately 660 active mines. Construction sand and gravel are the dominant mineral commodities produced.			
It is our belief that SWRCB staff generally believes the existing mining industry in California is adequately regulated, with sufficient sediment controls required in existing regulatory programs. This view has been reflected in agency statements throughout many years of regulatory development, and it seems to be the context of statements elsewhere within the SWRCB staff report on this item.			
Response: Comment noted. There is no foreseeable significant impact on mineral resources. The mineral resource zones which extend through hydrologic units affected by the Provisions are <i>occasionally</i> mined during dredging activities. The effects of (and to) dredging activities are considered in several areas of the State Water Board's Staff Report and Substitute Environmental Document (Staff Report), including but not limited to Sections 6.10, 7.2.3, 8.3, and 8.4. The other form of mining that may occur in such areas would be bar skimming along streams, but that only occurs on occasions when water is not present in the streambed, and no impact is reasonably foreseeable. The primary effects of the provisions on existing mining operations are considered under separate sections of the Provisions, which discuss the effects of (and to) stormwater and industrial wastewater dischargers. Where existing mining operations require or maintain stormwater or industrial discharge permits, the effects of (and to) those operations are considered in several areas of the Staff Report, including but not limited to Sections 6.11, 7.2.6, 7.2.7 through 7.2.11, 8.3 and 8.4.			
Letter: CalCIMA2 , Pg6, P2	COMMENT	Excerpt: 27	Type: CEQA/Mines
The potential impacts on the existing industry are not unknown to the SWRCB as the staff report reflects in other locations. For example, on page 129 the Staff report discusses regulatory interfaces of currently operating mines which may intersect with this policy.			

Responses to Comments—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 Mercury Provisions.

“Currently operating mines are much smaller sources than historic mines. Before a mine may discharge to surface water the mine owner must first obtain an NPDES permit. For mines regulated with an NPDES permit, the requirements are discussed in Section 6.12 and Section 6.13. Mines that don’t discharge directly to surface water still generate runoff from storm water. Storm water from a mine site may be regulated under the Water Board’s NPDES Statewide General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit), and the requirements for storm water discharges are discussed in Section 6.11.”

It seems clear to us the SWRCB is aware of potential impacts to mineral resources but for some reason failed to discuss and fully assess them within the analysis section. This analysis is required by the California Environmental Quality Act (“CEQA”), and such an analysis must be undertaken before the proposal can pass muster under CEQA’s initial study requirements for potentially significant environmental impacts. (See CEQA checklist at Appendix G, II.)

Response: Please see Section 4.4.1 and Section 8.4.11 of the Staff Report. Also, see Figure 4-1.

Letter: CalCIMA2 , Pg6, P4	COMMENT	Excerpt: 28	Type: New Industrial SW Permit
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In particular, as noted above, we are very concerned about the new discharger provisions of the Industrial Stormwater Permit should the SWRCB not mitigate and resolve that issue. Not being able to obtain an industrial discharge permit is more than a minor inconvenience for new industrial dischargers; without this legal authority to discharge stormwater, a facility could not exist. Only the SWRCB has any authority to mitigate provisions of the industrial stormwater permit by modifying that permit when it is reopened or a new permit is approved.

Response: This only applies to 303(d) listed water bodies. The Industrial General Permit is implementing the Federal Regulations that require no new sources of the pollutant for which the water body is impaired.

Letter: CalCIMA2 , Pg6, P5	COMMENT	Excerpt: 29	Type: Mercury source
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In order to aid the SWRCB in analyzing the Importance of mineral resources as well as the expected level of future permitting within California, we refer the SWRCB to several available references on mineral resources. To understand the likely locations of future mineral resource development within the state, we recommend discussions with the Department of Conservation. Since 1976 the Department of Conservation has operated a mineral classification program which identifies primarily construction aggregate resources of statewide and regional significance. An index of those reports can be found in, *“Publications of the SMARA Mineral Land Classification Project Dealing with Mineral Resources in California, 2013 (1)”*

Response: Comment noted

Letter: CalCIMA2 , Pg7, P2	COMMENT	Excerpt: 30	Type: 303(d)
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(MapSheet 52) Currently that report indicates the state currently has 34 percent of its 50 year demand under permit and will need to permit nearly eight billion tons of construction aggregate resources over the next 50 years. Many of those facilities would be “new dischargers” under

the industrial permit. MapSheet 52 does a good job of explaining the importance of construction aggregate mineral resources of the state as well as discussing the availability and shortage by numerous regions. Its nature as a low cost bulk commodity makes it ideal, both environmentally and economically, for there to be local sources of construction aggregates available. The legislature recognized this in Public Resources Code 2711(d) and 2711(f):

“(d) The Legislature further finds that the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state’s infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state.”

And

“(f) The Legislature further finds that the state’s mineral resources are vital, finite, and important natural resources and the responsible protection and development of these mineral resources is vital to a sustainable California.”

Response: Comment Noted

Letter: CalCIMA2 , Pg7, P3	COMMENT	Excerpt: 31	Type: Mines/Correction/CEQA
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The SWRCB should correct the environmental analysis to reflect the policy’s potential impact on the state’s mineral resources, in particular the state’s construction aggregate mineral resources which have been the focus of the state’s identification Mapping and Resource Protection programs. Using knowledge of areas where mercury is of concern, as well as knowledge of probable locations of future mineral resource production, would allow the SWRCB to analyze properly the potential impacts of this policy.

Response: Please see Section 4.4.1 and Section 8.4.11 of the Staff Report. Also, see Figure 4-1.

Letter: CalCIMA2 , Pg7, P4	NOT COMMENT	Excerpt: 32	Type: Greet/Ending
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We appreciate the opportunity to comment on the beneficial uses and mercury objectives. Should you have any questions regarding our comments do not hesitate to contact us at (916) 554-1000 Ext. 102.

Response: Comment noted.

SJTA_O

Author: Patrick Lewis **Title:** Mr. **Organization(s):** [Click here to enter text.](#)

Address: [Click here to enter text.](#) **Interest Group:** Water Suppliers

Date: 2/7/2017

Contact person: [Click here to enter text.](#) **Phone:** [Click here to enter text.](#) **E-mail:** plewis@olaughlinparis.com

Letter: SJTA_O, Pg0, P0	COMMENT	Excerpt: 1	Type: Request: More Time
The San Joaquin Tributaries Authority is concerned about the accelerated pace being used to adopt the proposed measures.			
Response: Please see Response to Comment WSPA2-2.			
Letter: SJTA_O, Pg0, P0	COMMENT	Excerpt: 2	Type: Not in compliance with CEQA
We feel that the draft staff report is not in compliance with CEQA because it only provides scant analysis of implementation procedures. We feel that this is due to the accelerated pace and are worried that the implementation measures are too vague.			
Response: Comment noted. Regarding the Staff Report not in compliance with CEQA, please see Response to Comment WSPA2-9.			
Letter: SJTA_O, Pg0, P0	COMMENT	Excerpt: 3	Type: Mercury source
There is concern about the analysis and use of the provisions as a back fill regulation should the mercury reservoir program not be adopted. Currently the staff report is silent on whether up stream discharges will be regulated the mercury provisions or not.			
Response: Application of the objectives is described in Chapter III.D.2 of the Provisions. Which objectives apply depends on the designated beneficial uses or if the water body is located in one of the California least tern designated habitats, which are included in Attachment C of the Provisions. Attachment B of the Provisions provides a decision diagram to help dischargers and regulators determine which water quality objectives apply and which objectives to focus on for sampling purposes. The mercury water quality objective for CUL is equivalent to COMM. The water quality objectives for SUB and T-SUB will not apply to any waters at the time the Provisions are adopted and will only apply to any water bodies after the applicable Regional Water Board designates one of these beneficial uses to the water body.			
Letter: SJTA_O, Pg0, P0	COMMENT	Excerpt: 4	Type: Split the Project
We are requesting more time to fully understand the full staff report and the bifurcation of the mercury provisions from the proposed beneficial uses.			

Responses to Comments—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 Mercury Provisions.

Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.

NCWA_O		
Author: Alan Lilly	Title: Mr.	Organization(s): Northern California Water Association
Address: Click here to enter text.		
Date: 2/7/2017		
Contact person: Alan Lilly	Phone: Click here to enter text.	E-mail: abl@ykslawfirm.com

Letter: NCWA_O	COMMENT	Excerpt: 1	Type: Language Recommendation
The Northern California Water Association has proposed changes to Appendix A of the January 3 draft staff report with a focus on part 2 on page 108. We are proposing a couple of changes. First, we want text to contain a statement that confirms that while the State may create flow objectives as necessary to protect the proposed new beneficial uses, this is not intended to be a State Board normal practice. Instead, the intent is that the beneficial uses be supported by traditional water quality objectives.			
Response: Please see Response to Comment ACWA1-12.			
Letter: NCWA_O	COMMENT	Excerpt: 2	Type: Language Recommendation
Second, we want this sentence added to the end of each beneficial use definition, “the function of the beneficial use is not intended to protect or enhance fish population or aquatic habitat.” These beneficial use definitions are what will ultimately go in the basin plan without the additional text that supports these claims in the staff report. Fish population and aquatic habitat are already protected by other existing beneficial uses and it needs to be made clear that going forward these proposed beneficial uses do not protect fish population or aquatic habitat.			
Response:			

CASA_O**Author:** Adam Link **Title:** Mr. **Organization(s):** California Association of Sanitation Agencies**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Adam Link **Phone:** [Click here to enter text.](#) **E-mail:** alink@casaweb.org

Letter: CASA_O	COMMENT	Excerpt: 1	Type: Split the Project
The California Association of Sanitation Agencies want the bifurcation of the mercury wildlife objectives form the proposed beneficial uses component.			
Response: Please see Responses to Comments WSPA2-3 and 19.			
Letter: CASA_O	COMMENT	Excerpt: 2	Type: General Support
While we support the development of the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses there is concern that the proposed beneficial uses and the mercury objectives don't fit well together.			
Response: Comment noted.			
Letter: CASA_O	COMMENT	Excerpt: 3	Type: BUs
For example, the proposed beneficial uses can have further impacts that go beyond mercury and this not entirely make clear in the staff report.			
Response: Please see Response to Comment WSPA2-20.			
Letter: CASA_O	NOT COMMENT	Excerpt: 4	Type: BUs
The staff report also is written in such a way that the full impact of the proposed beneficial uses is no discussed, especially when discussing TMDLs.			
Response: Please see Responses to Comments WSPA2-27 and 29.			
Letter: CASA_O	NOT COMMENT	Excerpt: 5	Type: Implementation
There are many unanswered questions about how the proposed beneficial uses will be implanted especially at the regional level.			
Response: Please See Responses to Comments WSPA2-8, 34, and CVCWA1-36.			
Letter: CASA_O	COMMENT	Excerpt: 6	Type: Guidance
Guidance is needed so the implementation is uniformed across the regions and should be included with the implementation of the proposed beneficial uses.			

Responses to Comments—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 Mercury Provisions.

Response: Please See Responses to Comments WSPA2-8, 34, and CVCWA1-36.

KarukTribe_O

Author: Lynne Saxton **Title:** [Click here to enter text.](#) **Organization(s):** The Karuk Tribe

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Lynne Saxton

Phone: [Click here to enter text.](#)

E-mail: lynne@saxtonlegal.com

Letter: KarukTribe_O	NOT COMMENT	Excerpt: 1	Type: General Support
The Karuk Tribe supports the creation of the development of the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses.			
Response: Comment noted.			
Letter: KarukTribe_O	NOT COMMENT	Excerpt: 2	Type: General Support
An example of how these beneficial uses have helped is during the Karuk World Renewal Ceremony on the Klamath river in the North Coast where Tribal Cultural beneficial uses are already established . The beneficial use prevented and algaecide application up river form the ceremony sites. If the algaecide had been applied, it would have allowed dangerous algal toxins to be released, which would have gone down stream to the ceremony site.			
Response: Comment noted.			
Letter: KarukTribe_O	COMMENT	Excerpt: 3	Type: General Support
We feel that the proposed beneficial uses stay apart of the mercury provision. Staff have done a thorough job with the staff report an provided ample outreach opportunities and provided clear transparency.			
Response: Thank you for your support.			

CVCWA_O**Author:** Debbie Webster **Title:** [Click here to enter text.](#) **Organization(s):** The Central Valley Clean Water Association**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Debbie Webster**Phone:** [Click here to enter text.](#)**E-mail:** [Click here to enter text.](#)

Letter: CVCWA_O	COMMENT	Excerpt: 1	Type: Request: More Time
The Central Valley Clean Water Association is requesting more time. We found that there was a difference of opinion of what each beneficial use really means, what we think verses what someone else was thinking.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CVCWA_O	COMMENT	Excerpt: 2	Type: Language
Regarding providing specific language for each beneficial use, we find it important to really understand each other needs before giving specific language.			
Response: Comment noted.			
Letter: CVCWA_O	COMMENT	Excerpt: 3	Type: General Support
We support the creation of the proposed beneficial uses.			
Response: Comment noted.			
Letter: CVCWA_O	COMMENT	Excerpt: 4	Type: Attainability
Regarding the provisions, we want to make sure what the provisions propose are achievable and obtainable.			
Response: Please see Response to Comment WSPA2-4 and 5.			
Letter: CVCWA_O	COMMENT	Excerpt: 5	Type: Implementation
We are worried about how this will affect the POTW implementation, specifically looking at the program of implementation and insignificant sources sections.			
Response: Implementation for POTWs is discussed at length in the Staff Report and in the Responses to Comments document.			
Letter: CVCWA_O	COMMENT	Excerpt: 6	Type: Attainability
We agree that the assessment of impacts of the proposed beneficial uses to POTWs and other dischargers have been left out and require further discussion.			

Response: Concerns over the impacts, both economic and environmental, to dischargers are discussed at length in the Staff Report and in the Responses to Comments document.

BACWA_O

Author: Lorien Fono **Title:** [Click here to enter text.](#) **Organization(s):** Bay Area Clean Water Agencies

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Lorien Fono **Phone:** [Click here to enter text.](#) **E-mail:** lfono@bacwa.org

Letter: BACWA_O	NOT COMMENT	Excerpt: 1	Type: General Support
The Bay Area Clean Water Agencies support the development of the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses.			
Response: Comment noted.			
Letter: BACWA_O	COMMENT	Excerpt: 2	Type: Economics
However, we are concerned that the proposed implementation requirements for these proposed beneficial uses will not get us any closer to obtaining the water quality objectives to protect beneficial uses and will burden the ratepayers.			
Response: Please see Response to Comment ACWA-CWA1-22.			
Letter: BACWA_O	NOT COMMENT	Excerpt: 3	Type: Mercury source
Over the years there have been major reductions (10 fold over 50 years) of mercury inputs into the San Francisco Bay yet mercury levels remain the same in fish. Even if discharge was halted altogether the mercury in fish tissue would not decline any faster due to the huge mercury deposit in sediments and the legacy mining up stream.			
Response: Certain pollutants such as mercury will indeed take many years, even decades, to remediate for certain water bodies. The Provisions, however, apply to discharges from sources throughout the state, including those upstream of the San Francisco Bay. Please also note that the San Francisco Bay Mercury TMDL is already in effect and is not superseded by the Provisions.			
Letter: BACWA_O	NOT COMMENT	Excerpt: 4	Type: Attainability
We fear that the proposed beneficial uses will have an unintended consequence of reopening of the San Francisco Bay TMDL and very few members would be able to meet the low water quality effluent limits that would be calculated from the water quality objectives associates with the proposes beneficial uses and mercury provisions.			
Response: Please see Responses to Comments WSPA2-27 and 29.			
Letter: BACWA_O	COMMENT	Excerpt: 5	Type: Split the Project
We want to bifurcate the mercury objectives and the proposed beneficial uses.			

Responses to Comments—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 Mercury Provisions.

Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.

CWA_O2

Author: Jack Hawks **Title:** Mr. **Organization(s):** The California Water Association

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Jack Hawks **Phone:** [Click here to enter text.](#) **E-mail:** jhawks@calwaterassn.com

Letter: CWA_O2	COMMENT	Excerpt: 1	Type: Request: More Time
The California Water Association are requesting two actions be taken, first we would like the comment period to be extended...			
Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.			
Letter: CWA_O2	COMMENT	Excerpt: 2	Type: Request: More Time
..and the second is to slow down the adoption process.			
Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.			
Letter: CWA_O2	COMMENT	Excerpt: 3	Type: Request: More Time
Please consider extending comments until April 17 and then have another hearing in May.			
Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.			
Letter: CWA_O2	COMMENT	Excerpt: 4	Type: Request: More Time
Release of the revised staff report could happen June 9 and public comments due July 10 with the final Water Board decision made in September.			
Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.			

ACWA_01

Author: Rebecca Franklin **Title:** [Click here to enter text.](#) **Organization(s):** The Association of California Water Agencies

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Rebecca Franklin **Phone:** [Click here to enter text.](#) **E-mail:** rebeccaf@acwa.com

Letter: ACWA_01	COMMENT	Excerpt: 1	Type: Request: More Time
The Association of California Water Agencies are requesting an extension of time and are concerned about the applicability of the water quality objectives.			
Response: See response to WSPA2-2, 18.			
Letter: ACWA_01	COMMENT	Excerpt: 2	Type: Implementation
We are worried about a lack of analysis of the impact of implementation and sciences behind the mercury objectives.			
Response: Chapter 6 of the Staff Report provides a thorough analysis of the various issues related to the Provisions. The decisions are supported by the science included in reference material and in the appendices to the Staff Report.			
Letter: ACWA_01	COMMENT	Excerpt: 3	Type: Reservoirs
We are also concerned about the lack of clarity about how the objectives would work if the reservoir program is not implemented.			
Response: Please see Response to ACWA1-180.			
Letter: ACWA_01	COMMENT	Excerpt: 4	Type: Reservoirs
We suggest that the provision be revised or remove as a back stop regulation for the reservoir program.			
Response: Please see Response to ACWA1-180.			
Letter: ACWA_01	COMMENT	Excerpt: 5	Type: Beneficial Uses and Water Quality Objectives
We question the science used to develop the human and wildlife objectives for mercury because there is a lot of uncertainty about the bioaccumulation factors in water column objectives and bioaccumulation of mercury in fish tissue.			
Response: Please see Response to Comment WSPA2-75.			
Letter: ACWA_01	COMMENT	Excerpt: 6	Type: BUs/Impact on other Objectives
We agree that there needs to be Tribal Cultural Uses and Tribal substance fishing and substance fishing uses but we think this document does not consider all the potential impacts of implementation of the mercury objectives or the proposed beneficial uses.			

Responses to Comments—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 Mercury Provisions.

Response: The Staff Report and the Response to Comments document addresses concerns about potential impacts of implementation of the Provisions.

ACWA_O2**Author:** Miles Hogan **Title:** Mr. **Organization(s):** The Association of California Water Agencies**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Miles Hogan **Phone:** [Click here to enter text.](#) **E-mail:** mhogan@ci.ventura.ca.us

Letter: ACWA_O2	COMMENT	Excerpt: 1	Type: Request: More Time
The Association of California Water Agencies would like to bring attention to implementation challenges of the mercury provisions. We want an extension of time.			
Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: ACWA_O2	NOT COMMENT	Excerpt: 2	Type: Economics
We want to work with staff to create a cost effective way of implementing the mercury provisions.			
Response: Comment noted.			
Letter: ACWA_O2	COMMENT	Excerpt: 3	Type: Discharge Applicability
There is confusion in the regulatory language regarding the naming of individual discharge permits, such as municipal and industrial wastewater discharge permits. It is not clear if the intention is to limit the provisions to just wastewater and industrial discharges or to the broader category of individual non-stormwater NPDES permits.			
Response: Please see Response to Comment ACWA1-92.			
Letter: ACWA_O2	COMMENT	Excerpt: 4	Type: Provision revised
In both cases the staff report and regulatory language should be revised to provide clarity.			
Response: Comment noted.			
Letter: ACWA_O2	COMMENT	Excerpt: 5	Type: Request: More Time
We feel that in order to have a successful mercury program there needs to be a delay in the adoption of the provisions until September so staff can design a cost effective implementation program that archives real mercury reductions.			
Response: Please see Response to Comment WSPA2-2.			
Letter: ACWA_O2	NOT COMMENT	Excerpt: 6	Type: Economics
With respect to water quality issues, our primary concern is that currently written the center piece of the implementation program set forth in			

Responses to Comments—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 Mercury Provisions.

the mercury provision is an amendment to the state implementation program which will require the imposition of new very strict mercury numeric water quality effluent limits in PMDES permits for non-storm water discharges . This will place responsibility for generation multimillion if not billions of dollars on ratepayers to create new capital for required treatment upgrades even though theses discharges are not appreciable source of mercury.

Response: Please see Responses to Comments ACWA1-22.

ACWA_03

Author: Fiona Sanchez **Title:** [Click here to enter text.](#) **Organization(s):** The Association of California Water Agencies

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Fiona Sanchez

Phone: [Click here to enter text.](#)

E-mail: sanchezf@irwd.com

Letter: ACWA_03	COMMENT	Excerpt: 1	Type: Request: More Time
The Association of California Water Agencies is concerned with the implementation and requests an extension on the adoption process of the mercury provisions.			
Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: ACWA_03	NOT COMMENT	Excerpt: 2	Type: implementation
Focusing on wetlands development and restoration, the draft provisions provide discretionary control to the Water Boards to use existing laws to implement mercury control to areas with elevated levels of mercury.			
Response: Comment noted.			
Letter: ACWA_03	NOT COMMENT	Excerpt: 3	Type: implementation
The staff report emphasis the management procedure listed in the regulatory text but which are relatively untested and their potential utility for mercury control on a wide scale is unknown. The staff report says that the information is not advanced enough to provide BMPs that will clearly reduce mercury or methylmercury in most instances.			
Response: Please see Responses to Comments ACWA1-269 and 270.			
Letter: ACWA_03	NOT COMMENT	Excerpt: 4	Type: Wetlands
The challenge of wetlands is the draft provision is that this understanding is not translated to the regulatory language and that regulatory language will be what survives the rule making and drive Water Board decisions in the future.			
Response: Comment noted.			
Letter: ACWA_03	NOT COMMENT	Excerpt: 5	Type: Wetlands
Absent of any revisions the text implies that A) the listed measures are necessary and appropriate to put in permits for wetland development, which they are not. B) The listed measure will achieve mercury reductions form wetland projects, which they may not, leaving a cloud of regulatory uncertainty over the future.			

Responses to Comments—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 Mercury Provisions.

Response: Please see Response to Comment ACWA1-159.			
Letter: ACWA_03	COMMENT	Excerpt: 6	Type: Wetlands
We would like the regulatory language changed to reflect current knowledge of the effectiveness of wetland control methods and clarify that the listed methods may not always be appropriate or just remove the list all together.			
Response: Please see Response to Comment ACWA1-269. In addition, The intent of appendix Q is to summarize “recent studies on potential methods to control mercury or methylmercury into or coming out of a wetland.” Appendix Q notes that “None of these methods are formally established best management practices, but best management practices could be developed in the future from such studies.” These are only possible options for controlling mercury and should be used with careful consideration.			

ACWA_O4

Author: Mary Lynn Coffee **Title:** [Click here to enter text.](#) **Organization(s):** The Association of California Water Agencies

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Mary Lynn Coffee **Phone:** [Click here to enter text.](#) **E-mail:** mlcoffee@nossaman.com

Letter: ACWA_O4	COMMENT	Excerpt: 1	Type: Request: More Time
The Association of California Water Agencies are requesting and extension until the fall.			
Response: Please see Responses to Comments WSPA2-2 and 3.			
Letter: ACWA_O4	COMMENT	Excerpt: 2	Type: Request: More Time
We want time to work out two primary issues which are not driven by the proposed beneficial uses. These are driven by water quality objectives and numeric effluent limits which were introduced January 4.			
Response: Please see Responses to Comments WSPA2-2 and 18.			
Letter: ACWA_O4	NOT COMMENT	Excerpt: 3	Type: Implementation
There issues come from the concern that we work together to create an implementation program that is realistically designed to achieve meaningful reductions of mercury.			
Response: Please see Responses to Comments ACWA1-125 and 126.			
Letter: ACWA_O4	COMMENT	Excerpt: 4	Type: Attainability/Compliance
We also want to make sure that there is provision in individual NPDES permits discharges to establish compliance with these very low and potentially unattainable effluent limits and water quality objectives.			
Response: Please see Response to Comment ACWA1-126.			
Letter: ACWA_O4	COMMENT	Excerpt: 5	Type: Attainability/Compliance
We are really concerned because the water quality objectives .2 and .5 ng/L will pretty much apply to every inland surface water, bay and estuary, they all have at least one of the designated beneficial uses to which they apply. Similar the 4 ng/L and the 12 ng/L effluent limits will immediately apply and begin to be implemented in the NPDES permits. This will drive the thought of “what do we need to do to comply?” because they are seriously concerned about cost and the time period need to come in to compliance.			
Response: Please see Response to Comment ACWA1-168.			

Responses to Comments—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 Mercury Provisions.

Letter: ACWA_O4	COMMENT	Excerpt: 6	Type: Variance Policy
With regards to water quality objectives possibly consider adopting authorities to do variances, federal law allows you to do variances but we have to have implanting authority in the state of California which we do not have yet.			
Response: Please see Response to Comment ACWA1-27.			
Letter: ACWA_O4	COMMENT	Excerpt: 7	Type: UAA
There needs to be discussion of UAAs and SIP amendments. Staff will tell you that UAAs don't get done in California but there federal law allows them to be done under certain circumstance like those applicable here but we need some authorization to do them.			
Response: Please see Responses to Comments CVCWA1-7, 37, and ACWA1-128.			

ACWA_05

Author: Sue Meyer **Title:** [Click here to enter text.](#) **Organization(s):** The Association of California Water Agencies

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Sue Meyer **Phone:** [Click here to enter text.](#) **E-mail:** smeyer@nossaman.com

Letter: ACWA_05	COMMENT	Excerpt: 1	Type: Language
The Association of California Water Agencies likes the proposed beneficial uses but we would like to see the workshop on flows and the proposed beneficial uses included in the staff report and regulatory language as there was good discussion developed during the workshop.			
Response: Response to Comments document contains discussion of flows. However, no changes will be made to the Provisions regarding flows or instream flows. Please see Response to Comment ACWA1-33.			
Letter: ACWA_05	COMMENT	Excerpt: 2	Type: Language
We want to make sure that the provisions and regulatory language accurately reflect the comprehensive presentation and discussion, including the proposed beneficial uses implementation in flow and fish population objectives and requirements in the basin plan, NPDES permits, DWR permits, and any intended limitations.			
Response: Please see Response to Comment ACWA1-12.			
Letter: ACWA_05	COMMENT	Excerpt: 3	Type: BUs/Impact on other Objectives
We feel that the proposed beneficial uses may have a rippling effect which may lead to implications on other programs such as TMDLs and affecting limits of other harmful pollutants.			
Response: Regarding the impact on the proposed beneficial uses on TMDLs, please see Responses to Comments WSPA2-27 and 29. Regarding other pollutants, please see Response to Comment WSPA2-20.			
Letter: ACWA_05	NOT COMMENT	Excerpt: 4	Type: BUs/Flow
Tribal cultural uses as well as tribal treaty rights have been used to claim flow and fish quantity instream requirements. It may be the case that the proposed beneficial uses trigger flow objectives in basin plans.			
Response: Regarding flow and fish quantity in stream requirements, please see Appendix T, question 1. Regarding basin plan amendments, please see Response to Comment WSPA2-8.			
Letter: ACWA_05	COMMENT	Excerpt: 5	Type: BUs
We want a clear scope and limitations of these proposed beneficial uses in the regulatory provision themselves, which is the language that will Responses to Comments—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 Mercury Provisions.			

survive in to the SIP and Water Quality Control Plan.			
Response: Please see Response to Comment ACWA1-158.			
Letter: ACWA_O5	COMMENT	Excerpt: 6	Type: Request: More Time
We also request a time extension and a revised staff report be published. We also would like guidance (with a little “g”) written to be provided with provisions on implementing the proposed beneficial uses.			
Response: For the time request, see Responses to Comments WSPA2-2 and 4. For the guidance, see Responses to Comments WSPA2-8 and 13.			

CCIMA_O**Author:** Adam Harper **Title:** Mr. **Organization(s):** The California Construction and Industrial Metals Association**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Adam Harper **Phone:** [Click here to enter text.](#) **E-mail:** charper@calcima.org

Letter: CCIMA_O	COMMENT	Excerpt: 1	Type: Request: More Time
The California Construction and Industrial Metals Association would like to point out that 45 days is not enough time to fully and thoroughly go through the staff report and determine what will happen to our DWRs and other permits. We absolutely need more time.			
Response: Comment Noted. Also, please see Response to Comment WSPA2-2.			
Letter: CCIMA_O	NOT COMMENT	Excerpt: 2	Type: New Industrial SW Permits
One issue is the industrial storm water permit, when it was adopted the Board put in a 303(d) citation where ether is not a TMDL, to be a new discharger and be subject to eligibility under the industrial storm water permit you have to make certain demonstrations to show compliance with water quality objectives.			
Response: The Federal Regulations require no new sources of a pollutant if the water body for which the discharge will occur is impaired for that pollutant.			
Letter: CCIMA_O	NOT COMMENT	Excerpt: 3	Type: Summary
The staff report call out what is a conundrum and we are not sure how this applies to us.			
Response: Comment noted.			
Letter: CCIMA_O	COMMENT	Excerpt: 4	Type: No Path for Compliance
The third requirement may be problematic because the provisions do not include a water column objective for mercury so it is unclear how a discharger can demonstrate compliance with water quality objectives.			
Response: Please see Response to Comment CASQA2-14.			
Letter: CCIMA_O	COMMENT	Excerpt: 5	Type: Attainability/Compliance
There are many mercury-impaired water throughout the state that do not have TMDLs, lack of clarity could cause a problem with proving compliance. If you cannot prove compliance you cannot get a discharge permit, if you cannot discharge you cannot operate.			
Response: Please see Response to Comment CASQA2-14.			

SCWAA_O**Author:** Lesley Dobalian **Title:** Click here to enter text. **Organization(s):** The San Diego County Water Authority**Address:** Click here to enter text.**Date:** 2/7/2017**Contact person:** Lesley Dobalian **Phone:** Click here to enter text. **E-mail:** ldobalian@sdcw.org

Letter: SCWAA_O	COMMENT	Excerpt: 1	Type: Request: More Time
The San Diego County Water Authority is asking for a time extension. Our focus is on our reservoirs. We would like to see a more proactive approach in the implementation plan that includes coordination with USEPA and the California Air Resources Board to work on controlling atmospheric deposition, which is a major source of mercury in our reservoirs. We would also like to see coordination with the Department of Fish and Wildlife and the Office of Environmental Health Hazard Assessment on public health exposure reduction programs.			
Response: Please see Response to Comment MerclD1-7.			
Letter: SCWAA_O	COMMENT	Excerpt: 2	Type: reservoirs
We are concerned about the provisions that will apply to the reservoirs in San Diego there is a lot of uncertainty on how they will be implemented so we would like to see more coordination between these programs either through delayed implementation or slow down adoption to match the reservoir program or have a phased implementation approach.			
Response: Please see Response to Comment MerclD1-7.			
Letter: SCWAA_O	COMMENT	Excerpt: 3	Type: Water Quality Objectives
We also recommend that the proposed water quality objects be narrative rather than numeric due to the limited amount of scientific information on the impact of mercury on wildlife, this is particularly true of the California Least Tern.			
Response: Please see appendix K.2. In addition, please see response to comment CVCWA1-36.			
Letter: SCWAA_O	COMMENT	Excerpt: 4	Type: Objectives/Data
We recommend that the state provide support for additional studies, the studies should evaluate linkage between water column concentration and uptake of mercury in fish and bioaccumulation factors once more data is gathered, and then set numeric water quality objectives. The tribal subsistence fishing [objective] should be narrative not numeric, like the subsistence fishing [objective]. In addition, more evaluation is needed on the proposed beneficial use impacts to water suppliers. We support exemptions to insignificant dischargers and annual averages in the SIP.			
Response: Regarding additional studies, see CVCWA1-11 and 14. Regarding a narrative Tribal Subsistence Fishing Objective, given the very large body of research used to calculate the values for the numeric Tribal Subsistence Fishing Water Quality Objective, a narrative objective would be			

Responses to Comments—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 Mercury Provisions.

inappropriate. Regarding the impacts of beneficial uses to water suppliers, please see Response to Comment ACWA1-186. In addition, thank you for your statements of support.

CIEA_O

Author: Sherri Norris **Title:** Click here to enter text. **Organization(s):** California Indian Environmental Alliance

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Sherri Norris **Phone:** Click here to enter text. **E-mail:** sherri@cieaweb.org

Letter: CIEA_O	COMMENT	Excerpt: 1	Type: Do Not Split Project
The California Indian Environmental Alliance ask that you please have the full suite of information on substance and tribal substance fishing in front of you when making your decision. Please do not bifurcate the proposed beneficial uses form the mercury provisions. There was submissions for the definitions of the proposed beneficial uses be able to be amended and say that if that is the case than all the beneficial uses should be subject to amending.			
Response: We appreciate the Tribes' support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.			

PRT_O

Author: Marissa Herro **Title:** Click here to enter text. **Organization(s):** Pit River Tribe

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Marissa Herro **Phone:** Click here to enter text. **E-mail:** marissa.herro@pitrivertribe.org

Letter: PRT_O	COMMENT	Excerpt: 1	Type: Support
The Pit River Tribe fully support the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses and mercury objectives. Tribal beneficial use language adoption is essential for establishing future water quality parameters and uses. It is important that government-to-government relations with California Indian tribes be maintained in working towards development of partnerships and consensus of mutually beneficial policies and plans. The California Indian tribes are not considered solely members of the public but have sovereign authority.			
Response: We appreciate the Tribes' support in establishing the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses. Board staff will continue to recommend that the State Water Board adopt these beneficial uses as part of the proposed Provisions.			

CCEEB_O**Author:** Dawn Koepke **Title:** Click here to enter text. **Organization(s):** The California Council for Environmental and Economic Balance**Address:** Click here to enter text.**Date:** 2/7/2017**Contact person:** Dawn Koepke**Phone:** Click here to enter text.**E-mail:** dkoepke@mchughgr.com

Letter: CCEEB_O	COMMENT	Excerpt: 1	Type: Request: More Time
The California Council for Environmental and Economic Balance thinks that the time line is too fast. We are asking for an extension of time.			
Response: Please see Response to Comment WSPA2-2.			
Letter: CCEEB_O	COMMENT	Excerpt: 2	Type: Split the Project
We also want to bifurcate the mercury objectives from the proposed Tribal Cultural Uses and Tribal Substance Fishing and Substance Fishing. Although the two are interrelated, we feel that the proposed beneficial uses could have an impact that goes far beyond mercury impacts.			
Response: Please see Responses to Comments WSPA2-2, 3, and ACWA1-19.			
Letter: CCEEB_O	NOT COMMENT	Excerpt: 3	Type: Attainability
Like other comment before we have concerns over attainability of the science behind some to the numbers in the staff report.			
Response: Please see Responses to Comments CVCWA1-11 and 14.			
Letter: CCEEB_O	COMMENT	Excerpt: 4	Type: BUs/Impact on other Objectives
There also needs to be a more thorough assessment of the impacts that the proposed beneficial uses and mercury provisions will have on dischargers as well as looking at whether or not the numbers in the objectives could feasibly be reached by dischargers and what that means for compliance.			
Response: Please see Responses to Comments WSPA2-4, 5, 10, and 21-23.			

EIC_01

Author: April Popaditch **Title:** Click here to enter text. **Organization(s):** Elem Indian Colony

Address: Click here to enter text.

Date: 2/7/2017

Contact person: April Popaditch

Phone: Click here to enter text.

E-mail: a.popditch@elemindiancolony.org

Letter: EIC_01	NOT COMMENT	Excerpt: 1	Type: General Support
The Elem Indian Colony believes that water is extremely important to the Elem Indians. Since I was little, I have been around the water, it is our life, and it is tied to our culture. It is our hope to pass down our culture to our children.			
Response: Comment noted			

EIC_O2

Author: Karola Kennedy **Title:** Click here to enter text. **Organization(s):** Elem Indian Colony

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Karola Kennedy **Phone:** Click here to enter text. **E-mail:** kkarolaepa@gmail.com

Letter: EIC_O2	COMMENT	Excerpt: 1	Type: Support
The Elem Indian Colony full support the Tribal Cultural Uses and Tribal Substance Fishing and Substance Fishing Theses uses exist so it makes sense to adopt without further delay. Water quality standards will not be set until there is a beneficial use in place. Once in place these proposed beneficial uses can be used to create other water quality standards for things like cyanotoxins that inhibit cultural uses.			
Response: Thank you for your support.			

HPUL_01

Author: Amie Jackson Penn **Title:** Click here to enter text. **Organization(s):** The Habematolel Pomp of Upper Lake

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Amie Jackson Penn

Phone: Click here to enter text.

E-mail: ajackson@hpultribe-nsn.gov

Letter: HPUL_01	COMMENT	Excerpt: 1	Type: Support
The Habematolel Pomp of Upper Lake fully support the adoption of the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses and the mercury provisions. We think it is important to adopt the provision and beneficial uses now into the Inland Surface Waters Enclosed Bays and Estuaries. If bifurcated it will create unreasonable delay and not protect daily tribal use of the water and is a threat to all of us.			
Response: Thank you for your support. Please see Response to Comment WAPA2-2.			

HPUL_O2

Author: Lina Rosas **Title:** Click here to enter text. **Organization(s):** The Habematolel Pomp of Upper Lake

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Lina Rosas **Phone:** Click here to enter text. **E-mail:** Irosas@hpoltribe-nsn.gov

Letter: HPUL_O2	NOT COMMENT	Excerpt: 1	Type: Support
The Habematolel Pomp of Upper Lake fully support the adoption of the Tribal Cultural Uses and Tribal substance fishing and substance fishing uses and the mercury provisions. [Gave several great examples of clear lake progress over time going from a clear lake to what it is today. A distressed lake with water quality issues] There is concern about fish population and uses, which need good water quality, not being able to be passed down to the next generation.			
Response: Thank you for your support.			

BVR_01**Author:** Ron Montez **Title:** Mr. **Organization(s):** The Big Valley Rancheria**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Ron Montez **Phone:** [Click here to enter text.](#) **E-mail:** montez5752@comcast.net

Letter: BVR_01	NOT COMMENT	Excerpt: 1	Type: Self description
<p>I was raised on clear lake on the Elem with no running water or electricity and very poor living on welfare checks. My experience growing up was worrying about having enough food. Luckily, we had a lake. I would set traps and catch fish and I would provide fish for my family dinner. For a young boy this was special because it allowed me to excesses what I was taught, to provide for myself and my family. I remember swimming in Clear Lake when it was clear. I walked out and saw the fish and fed them form my hands. I would my traps in the tulle and know hot catch the most fish. I provided not only for my family but also for my aunt, uncles and cousins. My ties with water go way back, we used to pour water through cheesecloth to remove alga for our wash water. We used to have to go in to town to buy clean drinking water. I am a native man and I cannot seem to understand why I'm 67 years old and we [California] do not recognize native American people as any worth and to have policy that respects us as a sovereign nation.</p>			
Response: Comment noted			

BVR_O2**Author:** Sarah Ryan **Title:** [Click here to enter text.](#) **Organization(s):** The Big Valley Rancheria**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Sarah Ryan**Phone:** [Click here to enter text.](#)**E-mail:** sryan@bigvalley.net

Letter: BVR_O2	NOT COMMENT	Excerpt: 1	Type: Support
The Big Valley Rancheria are really pleased with the staff report. As previous speakers have said these Tribal Cultural Uses and Tribal substance fishing beneficial uses are pre-existing to the state of California but are not being currently considered when TMDLs are being developed, when NPDES permits are developed, they are not being considered when EIRs are done or in local ordinance even though tribes have been talking about their uses, consumption rates for many years.			
Response: Thank you for your support. Comment noted			
Letter: BVR_O2	NOT COMMENT	Excerpt: 2	Type: Support
I have been working for Big Valley for 16 years and I know that as long as I have worked here they have been talking about consumption rates of fish and cultural uses there water bodies. One of the reasons the uses are over looked is because we don't have the uses adopted at the state level or regional levels.			
Response: Comment noted			
Letter: BVR_O2	COMMENT	Excerpt: 3	Type: Support
Staff need to hold on to the current version of the proposed beneficial uses as they were vetted through a lot of tribes which has been stated in the staff report. Do not delay them because delaying them is unreasonable.			
Response: Please see Responses to Comments WSPA2-19 and 3			
Letter: BVR_O2	COMMENT	Excerpt: 4	Type: Support
Tribal uses are not protected as Ron Montez was saying earlier, our memory and heritage is based on the water. Its unacceptable to have such polluted water bodies around the state. Noe it becomes a human health concern to even do something in the water that is part of you heritage, which is unacceptable. We encourage you to keep the proposed beneficial uses in the plan and continue to move forward without delay.			
Response: Please see Responses to Comments WSPA2-19 and 3			

RVIT_O1**Author:** Paula Britton **Title:** [Click here to enter text.](#) **Organization(s):** The Round Valley Indian Tribes**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Paula Britton**Phone:** [Click here to enter text.](#)**E-mail:** pbritton@rvit.org

Letter: RVIT_O1	COMMENT	Excerpt: 1	Type: Support
The Round Valley Indian Tribes started working on this issue years ago and it's been at least eight years since we stated on mercury in fish. Basically Ditto to everything Sarah Ryan said. I feel the same way and the Round Valley Indian Tribes support the development of new beneficial uses and mercury provisions and want it to go through badly.			
Response: Thank you for your Support			
Letter: RVIT_O1	NOT COMMENT	Excerpt: 2	Type: General Support
Mr. Montez was a great speaker because all of the things he said came from my heart too. You can put a dollar amount on cultural resources especially those that are left here. I was at Standing Rock not too long ago. I grew up there and I was there when the two dams were put in and saw all the decimation it caused and I will happen again if we don't protect our cultural resources. I worked for the tribe on the Kern River and since I have been out here I have been working on water issues. It's important to everyone.			
Response: Comment noted.			
Letter: RVIT_O1	COMMENT	Excerpt: 3	Type: General Support
I have been trying to bridge the gap between Native Americans and the government. We seem to be talking in two different languages. I have been raised to look out for those who cannot look out for themselves, look out for nature, look out for our natural resources and be grateful. I think to delay this is really wrong. We need to move ahead.			
Response: Comment noted.			

BVR_O3**Author:** Dan Lucas **Title:** Mr. **Organization(s):** Big Valley Rancheria**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Dan Lucas **Phone:** [Click here to enter text.](#) **E-mail:** dllucas@big-valley.net

Letter: BVR_O3	NOT COMMENT	Excerpt: 1	Type: General
The Big Valley Rancheria would like to echo several pervious speakers. The Tribal Cultural Uses and Tribal Substance Fishing uses predate any uses that already exist and is in place today.			
Response: Comment noted.			
Letter: BVR_O3	NOT COMMENT	Excerpt: 2	Type: General Information
We should be asking do these uses that are recognized actually correspond to these proposed uses which actually have been in use for thousands of years. These uses are more a part of the land than ay thing else. The people are a part of the land. Water is as important to these people as the air they breathe.			
Response: Comment noted.			
Letter: BVR_O3	NOT COMMENT	Excerpt: 3	Type: Implementation
When creating policy, we do not decide every tiny detail before implementation. Implementation is where kinks are worked out. Do not wait to implement the provisions and proposes beneficial uses. How much longer are we going to keep these people waiting when they have been waiting for hundreds of years.			
Response: Comment noted.			

BVPomo_O

Author: Ruben Ballente **Title:** Click here to enter text. **Organization(s):** Big Valley Band of Pomo Indians

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Anthony Jack **Phone:** Click here to enter text. **E-mail:** ajack@big-valley.net

Letter: BVPomo_O	NOT COMMENT	Excerpt: 1	Type: Letter
This speaker read form a letter, please see BVPomo1.			
Response: Comment noted.			

RVIT_O2

Author: Brandi Brown **Title:** Click here to enter text. **Organization(s):** The Round Valley Indian Tribe

Address: Click here to enter text.

Date: 2/7/2017

Contact person: Brandi Brown **Phone:** Click here to enter text. **E-mail:** spones@att.net

Letter: RVIT_O2	COMMENT	Excerpt: 1	Type: Support
The Round Valley Indian Tribe would like to echo that it is important to include the provisions whit the proposed beneficial uses and move the process along. It has been trickling along long enough and I think that people when presented with a problem are able to solve it regardless of money. Technology, it is the mother of inventions, some people see it as a problem but I see it as opportunity to make us better to make water better for everybody.			
Response: Thank you for your support.			

SCAPOTW_O**Author:** Steve Jepsen **Title:** Mr. **Organization(s):** The Southern California Alliance of Public Owned Treatment Works**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Steve Jepsen **Phone:** [Click here to enter text.](#) **E-mail:** sjepsen@scap1.org

Letter: SCAPOTW_O	NOT COMMENT	Excerpt: 1	Type: Support
The Southern California Alliance of Public Owned Treatment Works(POTWs) support the development of Tribal Cultural Uses and Tribal substance fishing and substance fishing beneficial uses [...]			
Response: Comment noted.			
Letter: SCAPOTW_O	NOT COMMENT	Excerpt: 2	Type: How effect POTW implementation
but our members are still trying to figure out how the mercury provisions will affect their POTWs. How much of a contribution to mercury are POTWs. The plan is almost 700 pages sand involve multiple streams and waterways.			
Response: Comment noted.			
Letter: SCAPOTW_O	COMMENT	Excerpt: 3	Type: Request: More Time
Our ask is that we have more time to put together responses and make the plan adoptable, practical and usable. With Reponses only due in ten days, we are requesting additional time to fully understand the plan			
Response: Please see Responses to Comments WSPA2-2 and 18.			

CVCWA_O1

Author: Tom Grovhoug **Title:** Mr **Organization(s):** Central Valley Clean Water Association

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Tom Grovhoug **Phone:** [Click here to enter text.](#) **E-mail:** tomg@lwa.com

Letter: CVCWA_O1	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
The Central Valley Clean Water Association comments today only pertain to the mercury provisions and specifically to the proposed implementation plan for NPDES mainly the municipal discharges, although it will also apply to industrial discharges.			
Response: Comment noted.			
Letter: CVCWA_O1	NOT COMMENT	Excerpt: 2	Type: General Information
As you know, mercury is not a new issue for us. We have been working on mercury issue for about 20 years and have developed TMDLs to help solve the problem. Two TMDLs stand out, the one in the San Francisco Bay establish in 2006 and the Delta Methylmercury TMDL establish in 2012. Each are ongoing but have produced significant information and improve our understating of mercury sources and our ability to control those sources.			
Response: Comment noted.			
Letter: CVCWA_O1	COMMENT	Excerpt: 3	Type: Description of Reg
The Central Valley Clean Water Association strongly recommends that we capitalize on the work that has been done and incorporate the results of these TMDLs in the provisions and us the in the development of the implementation plan.			
Response: Comment noted.			
Letter: CVCWA_O1	NOT COMMENT	Excerpt: 4	Type: Mercury Source
I am presenting a chart that shows the major sources of methylmercury in the Delta. Most of the mercury comes from the Delta tributaries, open water, and wetlands. The small bars on top of the graph represent insignificant sources of mercury such as wastewater treatment plans, urban runoff, atmospheric deposition and agriculture runoff. We have also looked at changing load-changing load from POTWs over time. Today the NPDES is a very small contributor getting even smaller.			
Response: Please see Responses to Comments WSPA2-53 and CVCWA1-6 and 7.			
Letter: CVCWA_O1	NOT COMMENT	Excerpt: 5	Type: Minor Hg Contribution from POTWs
The other chart is information collected form treatment plans all over the valley, looking at effluent quality and comparing them against the Responses to Comments—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 Mercury Provisions.			

numbers proposed in the implementation plan. We have 10 treatment plant with the highest possible treatment quality and when compared to the proposed implementation plan numbers, the data shows all 10 plant can meet 12, 85% of the time they can meet 4, 30% of the time they can meet 1. If you translate that to all POTWs I do not see how those numbers could possibly be obtained. If you juxtapose this with the relatively small contribution of mercury by the POTWs, it's not the place we should be investing in source control. You have to go for after the biggest sources if you want to change mercury levels in fish.

Response: Regarding attainability, please see Responses to Comments WSPA2-4, 5, 10, and 21 – 23.

CWA_O**Author:** Andria Ventura **Title:** Click here to enter text. **Organization(s):** The Clean Water Action**Address:** Click here to enter text.**Date:** 2/7/2017**Contact person:** Andria Ventura **Phone:** Click here to enter text. **E-mail:** aventura@cleanwater.org

Letter: CWA_O	NOT COMMENT	Excerpt: 1	Type: Support
The Clean Water Action supports the proposed beneficial uses.			
Response: Thank you for your support.			
Letter: CWA_O	COMMENT	Excerpt: 2	Type: Do Not Split Project
I am specifically addressing the issue of whether we should Bifurcate the beneficial uses and the mercury provisions or not. We absolutely oppose bifurcation.			
Response: Comment noted.			
Letter: CWA_O	NOT COMMENT	Excerpt: 3	Type Do Not Split Project
This is because we have had enough delay on this issue and I respectfully respond to those who feel that it needs more discussion, that this was something that was supposed to go to the Board in 2013, this it slipped to 2014 an now its 2017.			
Response: Comment noted.			
Letter: CWA_O	NOT COMMENT	Excerpt: 4	Type: General Support
The one silver lining to all that is there was a robust stakeholder process. We put in the time to talk about the beneficial use definitions and why we want them. We know that staff reached out to dischargers so we believe that this is not being fast tracked, it took 4 year and last year we even asked not to put it in this document because we wanted to deal with it then. That is the primary reason we want to move forward and oppose delay.			
Response: Comment noted.			

UCD_O**Author:** Fraser Shilling **Title:** Dr. **Organization(s):** U.C. Davis**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Fraser Shilling **Phone:** [Click here to enter text.](#) **E-mail:** frashilling@ucdavis.edu

Letter: UCD_O	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
I am presenting two studies. The issues with mercury has been worked on for a long time. I have been doing this for about 17 years. We have a series of studies and often the studies done do not get use.			
Response: Comment noted.			
Letter: UCD_O	COMMENT	Excerpt: 2	Type: Bus/Tribal Subsistence Fishing
We did use one of the two studies in creating the Tribal Substance Fishing beneficial use. I want to bring up the substance fishing, if we do not develop quantitative standard then people will continue to have too much mercury going in to their systems.			
Response: Comment noted.			
Letter: UCD_O	COMMENT	Excerpt: 3	Type: Bus/Tribal Subsistence Fishing
There is this weird thing were people who eat at the highest rates are often the hardest to cope with in policy so they often get dropped from policy.			
Response: Comment noted.			
Letter: UCD_O	COMMENT	Excerpt: 4	Type: Bus/Tribal Subsistence Fishing
The two studies use the same methods used initial the studies referenced in the staff report. The study asked people how do they use fish (recreational fishing or substance fishing). In the Delta, the mean rate of fish use is higher that the TMDL. This means that theses people are not protected by the TMDL.			
Response: Comment noted.			
Letter: UCD_O	COMMENT	Excerpt: 5	Type: Bus/Tribal Subsistence Fishing
In terms of tribes, over 20 tribes participated in the study however this don not represent fish use by ALL tribes. During the study tribal elders said that the amount and quality of water is low enough to not support health fish populations.			
Response: Comment noted.			

Letter: UCD_O	COMMENT	Excerpt: 6	Type: Bus/Tribal Tradition & Culture
Traditional cultural use is impacted by availability of water. This map show s fishing locations, if you interviewed all 146 tribes you would most likely cover all waterways in California. In conclusion flow and water quality do mater when it comes to traditional cultural use.			
Response: Comment Noted, also Please See Response to Comment ACWA1-33.			

PSSEP_O**Author:** Craig Johns **Title:** Mr. **Organization(s):** Partnership for Sound Science in Environmental Policy**Address:** [Click here to enter text.](#)**Date:** 2/7/2017**Contact person:** Craig Johns**Phone:** [Click here to enter text.](#)**E-mail:** cjohns@calrestrats.com

Letter: PSSEP_O	NOT COMMENT	Excerpt: 1	Type: Greet/Ending
Partnership for Sound Science in Environmental Policy is going to answer how to get the most bang for your buck by tackling the biggest source of mercury and we will provided suggested language to staff.			
Response: Thank you for your comment.			
Letter: PSSEP_O	COMMENT	Excerpt: 2	Type: Revision
We also think some changes to the insignificant dischargers provision as well as possibly some changes to step 7 in section 1.3 of the SIP could address many of the concerns that insignificant dischargers have to their fear of being held to the 1 ng/L water column concentration limits.			
Response: Please See Response to Comment CVCWA1-22 and ACWA1-109.			
Letter: PSSEP_O	NOT COMMENT	Excerpt: 3	Type: Relative Source Contribution
The big bang for your buck issue is going back to when Central Valley Regional Board adopted its TMDL, we asked that there be recognition that owners of land in this state that are not part of the process either in mercury abatement or risk communication, specifically the State Lands Commission which has a lot of impacted sediments that get into water ways.			
Response: Please See Response to Comment CVCWA1-57.			
Letter: PSSEP_O	NOT COMMENT	Excerpt: 4	Type: Relative Source Contribution
The people through the State Lands Commission have responsibility to abate for mercury.			
Response: Comment noted			
Letter: PSSEP_O	COMMENT	Excerpt: 5	Type: Hg WQO Implementation
We want to be clear that we support the proposed beneficial uses but we also want to find a way for our represented client to comply with the mercury provisions.			
Response: Thank you for your support, comment noted.			
Letter: PSSEP_O	COMMENT	Excerpt: 6	Type: Revision

Responses to Comments—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 Mercury Provisions.

Second, the insignificant dischargers need some language changes that will allow the Regional Boards when writing their permits to use background information such as load sources to determine if there is potential to impact the stream.

Response: Suggestions for language changes from written letters regarding such language changes are addressed elsewhere in the Response to Comments document.

SLRBMI_O

Author: Sarah Ryan **Title:** [Click here to enter text.](#) **Organization(s):** San Lewis Rey Bank of Mission Indians

Address: [Click here to enter text.](#)

Date: 2/7/2017

Contact person: Tribal Coucil **Phone:** [Click here to enter text.](#) **E-mail:** lopezkeifer@gmail.com

Letter: SLBMI_O	NOT COMMENT	Excerpt: 1	Type: Summary
[Oral delivery of SLRBMI1 Letter]			
Response: Comment noted. Pleases see Responses to Comments in SLRBMI1 letter.			

CSQA_O**Author:** Geoff Brosseau **Title:** Click here to enter text. **Organization(s):** California Stormwater Quality Association**Address:** Click here to enter text.**Date:** 2/7/2017**Contact person:** Geoff Brosseau **Phone:** Click here to enter text. **E-mail:** Click here to enter text.

Letter: CSQA_O	NOT COMMENT	Excerpt: 1	Type: Support for Other Commenters
The California Stormwater Quality Association support the comments made by Adam Link and Mary Lynn Coffee.			
Response: Please see Responses to Comment CWSP1 and ACAW_04.			
Letter: CSQA_O	COMMENT	Excerpt: 2	Type: BU/Designation/Guidance
In terms of the proposed beneficial uses, we would like some sort of guidance when it comes to the designation process at the Regional Boards so there is consistency across the State.			
Response: Please see Responses to Comments WSPA2-8, 34 and CVCWA1-36.			
Letter: CSQA_O	NOT COMMENT	Excerpt: 3	Type: Language Recommendation
In our written comment, we will provide specific language on the implementation plan.			
Response: Comment noted.			
Letter: CSQA_O	COMMENT	Excerpt: 4	Type: Support of a Comment Letter
We also want to reiterate Tom Grovhaug’s comments about learning from the existing TMDLs regarding creating best management practices and it would be nice to place this information in the final staff report.			
Response: Comment noted.			
Letter: CSQA_O	NOT COMMENT	Excerpt: 5	Type: Fish tissue - WQO
It is interesting that in some cases, the people catching the fish may not be the ones eating the fish and it is important to get risk reduction information to the actual fish eaters.			
Response: Comment noted.			
Letter: CSQA_O	COMMENT	Excerpt: 6	Type: MS4
Finally, it would be nice to see the relational for the difference between requirements for Caltrans and the MS4.			
Response: Please See Response to Comment CASQA2 – 17.			

Responses to Comments—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 Mercury Provisions.

KBPomo1**Author:** Reno Keoni Franklin **Title:** Tribal Chairman **Organization(s):** Kashia Band of Pomo Indians of the Stewarts Point Rancheria**Address:** 1420 Guerneville Road, Suite 1, Santa Rosa, CA 95403**Interest Group:** CATribes**Date:** 2/17/2017**Contact person:** None**Phone:** 707-591-0580**E-mail:** tribalofc@stewartspoint.org

Letter: KBPomo1, Pg1, P1	COMMENT	Excerpt: 1	Type: Greet/Ending
<p>On behalf of the California Indian Environmental Alliance (CIEA) and Kashia Band of Pomo Indians (Kashia), Kashia thanks you for this opportunity to comment on the SWRCB Proposed Inland Surface Waters, Enclosed Bays & Estuaries Plan for Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives. For ease of reference we subsequently refer to it, the Draft Staff Report, the Substitute Environmental Documentation and the Provisions within it as the Plan.</p>			
<ul style="list-style-type: none"> • Response: Thank you for your comment and statement of support for the goals of the Provisions. 			
Letter: KBPomo1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Support
<p>We wish to extend our gratitude to the SWRCB staff for their detailed analysis and dedication in the completion of this Plan and for guidance on consistency language of the beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures or individuals.</p> <p>It is encouraging that the SWRCB recognizes these uses explicitly at this time as this action will allow the Board to consider the uses of California Tribes and non-Tribal subsistence fishing communities when guiding water quality in the state of California. This is especially important while setting these Statewide Mercury Water Quality Objectives and will be in future SWRCB programs and regulatory efforts.</p> <p>The legacy of Mercury in California land and waters is a reminder of the genocidal policies promulgated and carried out during the Gold Rush by local state and federal governments. The continuance of California Indian Peoples is a testimony to their strength, resiliency and their inherent responsibility to protect the environment that sustains their Peoples and all living things. When addressing the toxicity that persists from this era it is only fitting that the health and cultural continuance of California Indian Tribes and Tribal members be upheld. We thank the Board for including Tribal beneficial uses in the Provisions.</p>			

Responses to Comments—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 Mercury Provisions.

In order to assist in the success of this Plan and efforts that will stem from it we respectfully submit the following comments and recommendations to the proposed 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 Mercury Provisions, including the Staff Report the SED and the Provisions within, referred to as the Plan throughout this document: [sic]

- **Response:** Thank you for your comment and statement of support for the goals of the Provisions.

Letter: KBPomo1 , Pg2, P2	COMMENT	Excerpt: 3	Type: BU/Designation
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Continued inclusion of CUL, T-SUB and SUB

As you know Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, water quality conditions that could reasonably be achieved, and economic considerations. ((Wat. Code § 13241, subds. (a)- (d).) Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act. It is fitting that these be recognized and that they be part of current and future regional and state Water Board considerations.

Because the presence of mercury in California Waters negatively affects the ability of California Indian Tribes to practice culture and to eat traditional foods it is clear that the inclusion of Tribal considerations in this Plan is appropriate. Without such inclusion any Water Quality Objectives or resulting actions to reduce toxicity would be incomplete. The SWRCB staff are to be commended in their assistance to California Tribes and the environmental justice community in the creation of the three proposed beneficial use definitions. Staff provided input in order to maintain clarity and provide consistency with other state adopted beneficial use definitions.

Over a four year period CIEA worked with over 20 California Tribes to develop and seek consensus on the beneficial use definitions for California Tribes namely "tribal traditional and cultural uses" and "tribal subsistence fishing" in order that they could be applied statewide. Definition development began with the language first adopted by Region 1 and for four years we worked to revise these with CIEA, Tribal representatives and staff at Tribal meetings in North, Central and Southern California. California Tribes provided Tribal Resolutions in support of two reiterations of these definitions. SWRCB staff made additional changes in the Provisions which unfortunately changed these definitions as follows:

- **Response:** Thank you for your comment and statement of support for the goals of the Provisions.

Letter: KBPomo1 , Pg2, P5	COMMENT	Excerpt: 4	Type: Beneficial Uses
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In the definition of Tribal Tradition and Culture (CUL) the intent is that California Tribes will affirm that cultural activities are eligible under this definition, with each Tribe speaking on their own behalf to reveal culturally sensitive information by choice. Historically, Tribal cultures have been misappropriated and misinterpreted by outside entities. The removed phrase "as affirmed by California Native American Tribe(s)," was originally included by Tribes to ensure that the Tribes retain and share knowledge as it is appropriate and that misinformation is not provided by outside entities.

In the Provisions staff revised definition of Tribal Subsistence Fishing (T-Sub) to include a qualifying standard of "po," which we note may be interpreted to mean that only the minimum amount of sustenance will be protected. Tribes instead previously chose the word "fundamental" purposely to mean that sustenance is essential and necessary to the health and continuance of the Tribe.

Recommendations:

- Issue D. 6.4.3, We are in support of Option 2. Yes, the beneficial uses for tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing be established as beneficial uses
- That the Plan continue to include the three proposed beneficial use definitions: Tribal Tradition and Culture (CULI, Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing by other communities or individuals (SUB), and that the adoption of the Plan not be delayed unnecessarily.
- We recommend the following revisions to these definitions in order to return them to their original meaning and intent:

Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation, ceremonies, eF-fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, [as affirmed by California Native American Tribe(s).]

Tribal Subsistence Fishing (T-SUB): Uses of water involving the noncommercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet FRiFRal[fundamental]needs for sustenance.

- **Response:** Please See Response to Comment CIEAEtA11-3.

Letter: KBPomo1 , Pg3, P3	COMMENT	Excerpt: 5	Type: Human Activities.
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Bioavailability of Mercury

We appreciate the level of detail that SWRCB has provided regarding the fate, transport and bio-accumulative nature of mercury in the Staff Report and provide the following recommendation to strengthen and provide clarity to this information in section 4.4.8.

Recommendation:

- That the Plan include contemporary human activities that affect the included Water Quality Objectives. These include dredging for increased reservoirs storage capacity, for navigation and as part of mining operations, including small scale gold mining operations.
- **Response:** Please See Response to Comment CIEAEtA11-4.

Letter: KBPomo1 , Pg4, P2	COMMENT	Excerpt: 6	Type: Objectives/Other Contaminants
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Current and Future Use of the Beneficial Use Provisions:

Responses to Comments—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 Mercury Provisions.

Page xvii of the Executive Summary states that "the implementation provisions do not apply to discharges to receiving waters for which a mercury total maximum daily load is established." This sentence appears to lead to the future application of the Water Quality Objectives (WQOs) established by this Plan and applicability of the Provisions to currently established TMDLs by use of the word "is."

Page xviii states that associated mercury WQOs related to subsistence beneficial uses (T-SUB and SUB) should not be limited to the pollutant mercury. We thank SWRCB staff for their recognition that additional WQOs for other pollutants could be adopted as they are needed to protect these beneficial uses.

Recommendation:

- That the WQOs established within the Provisions of this Plan be used as a baseline to not only update existing mercury TMDLs, but also to create future mercury TMDLs and to complete associated regional basin plan amendments.
- That the Plan reiterate the adaptive nature of TMDLs, basin plan amendments and other applicable regulatory programs, early and often beginning in the Executive Summary and throughout the Plan so that so that as new information and technologies are available each region can attain more protective standards to bring the WQOs closer to protecting CA Tribal members at preferred historical rates.
- We recommend that this forward thinking sentiment also be extended explicitly in the Plan to the continued application of Tribal Cultural beneficial use.

- **Response:** Please See Response to Comment CIEAETa11-5.

Letter: **KBPomo1**, Pg4, P5

COMMENT

Excerpt: 7

Type: T-SUB Objective

Strengthening of the T-SUB Water Quality Objectives

This staff report contains the recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is "the same as the u.s. EPA nationally recommended subsistence rate."

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is that by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that water quality cannot get any better than the current inhibited rate.

Another way to state our concern is that the decision to accept a WQO based on the contemporary repressed fish consumption rate of 142 grams per day or 4.58 oz. meals per week merely maintains a lowered status quo in many waterbodies and does not go far enough towards the advancement of water quality. Our goal and objectives should be such that California Tribal members will be able to safely eat fish at the historical consumption rates of 223 grams per day or 7-8 oz. meals per week, the rate which is needed by Tribal members to maintain a healthful

and culturally acceptable subsistence fishing diet in California.

We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California's beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by u.s. EPA for Washington State (81 FR 85417, November 28,2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04,2011). It would simultaneously create consistency in WQOs for T13 and T14 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems. The 142 grams per day rate and the corresponding WQO was derived from staff interpretation of the SWRCB/USEPA-supported "CA Tribal Fish Consumption Study" (SWRCB- UC Davis, 2016), which reported that a mixture of T14 and trophic T13 fish are currently consumed by California Tribal members throughout the state. The report however, also stated that this mixture is not always reflected by a 70% T13/30% T14 mixture, and that all Tribes do not consume the same fish species.

Before and following the release of the SWRCB-UC Davis study California Tribes have cited cases where tribal members, or specific subsets within tribes, are currently consuming more than 30% of either native or a non-native species T14 fish either because the fish were historically consumed at greater rates, or as in the case of nonnative species the T13 fish is no longer available. When the T13 fish is not available the prevalent fish often has been replaced by an invasive T14 species, such as large-mouth bass. The SWRCB-UC Davis study reported that two generations ago Tribal members had begun to supplement traditional fish consumption with non-native species which are now a higher trophic level and are therefore higher in toxins. We are concerned that these Tribes and Tribal members will not be protected under the currently proposed TSUB fish tissue objective of 142 grams per day.

We are in support of the findings and recommendations in the SWRCB-UC Davis study which recommended that while this study provides an overview of California Tribal fish consumption patterns it is not exhaustive and it can be used as a baseline from which Tribes may choose to submit local information and evidence, including historical records and fish consumption studies at the regional board level to support increased WQOs to support higher consumption rates.

We note that there are some waterbodies that may already have mercury levels that support SUB, CUL and T-SUB or that are very close to achieving related objectives. We also recognize that anti-backsliding or anti-degradation provisions can be applied by the Water Board in California regulatory efforts and programs.

Recommendations: 6.5 Issues E: Yes, Option 2/amended as follows

That the Water Board adopt a numeric water quality objective for tribal subsistence fishing (T-SUB) based on a fish consumption rate of 175 grams per day. allowing safe consumption of fish at 5-6 meals per week,

- That the Plan affirm that this WQO is a minimum statewide standard,

- That Water Board staff provide a clear articulation of the process by which Tribes may designate waters for T-SUB so that Regional Water Boards can consistently and quickly designate such uses and where necessary to apply a stricter WQO at the regional board level
- That the Plan include measures to increase the availability of traditional TL3 fish through a mechanism for funding through an exposure reduction program specifically for the enhancement and restoration of fish habitat, and
- That the Plan include language regarding the applicable state and federal anti-degradation or anti-backsliding provisions
- It would also be helpful to see the associated fish consumption rates added to Table i. Summary of Mercury WQOs, to see how the Objective Type, Beneficial Uses and WQO are related to meals per week.

- **Response:** Please See Response to Comment CIEAetAl1-6.

Letter: KBPomo1 , Pg6, P4	COMMENT	Excerpt: 8	Type: BU/Designation
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CUL Water Quality Objective Considerations

We note that the Provision of Tribal Cultural CUL designation uses a lower fish consumption rate (FCR) but there may be other pathways and media for exposure to mercury other than fish consumption for cultural purposes, as opposed to subsistence fish consumption rates. Cultural uses including fish procurement and consumption during ceremonies vary widely. Some ceremonies require fish consumption for a single day and other ceremonies are a month long. Therefore, an objective based on one meal per week may not be protective of all ceremonial consumption patterns. However we also note that in the case of longer ceremonies T-Sub may be the applicable protected FCR.

Additionally, not all information regarding exposure to cultural uses has been established. For example we do not know how all aquatic plants utilized by California Tribes take up mercury or how Tribal exposure routes may exacerbate this exposure.

Recommendation: 6.6 Issue F. - Yes, Option 3/amended as follows

- We tentatively accept the one meal per week WQO, which is similar to the COMM WQO, but recommend that the Plan clearly recommend that Tribes work regionally with their Water Board to amend this criterion should it not be protective of their uses.
- That Water Board staff provide a clear process by which Tribes may designate waters for CUL so that Regional Water Boards can consistently and quickly designate such uses.

- **Response:** Please See Response to Comment CIEAetAl1-7.

Letter: KBPomo1 , Pg7, P3	COMMENT	Excerpt: 9	Type: Revist Relative Source Contribution
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Revist the RFC [sic]

The "relative source contribution" (RSC) used to develop Human Fish consumption rates in the equation on Page 41 is a separate consideration for methyl mercury exposure from commercially-bought fish as represented by the RSC and is the one used in the U.S. EPA's criterion (U.S. EPA 2001).

The calculation for the Mercury WQOs to protect human health describes the RSC as follows:

RSC = relative source contribution, estimated at 2.7×10^{-5} mg MeHg/kg body weightday.

Is this accurate in coastal areas of Northern California where populations eat more locally caught fish and the fish that is purchased is also locally sourced?

Recommendation:

- That SWRCB staff review the RSC to determine if this variable reflects the commercial fish consumption patterns of California communities and California Tribes. California Tribes, CIEA and our colleagues who work closely with communities may be able to assist this evaluation.
- **Response:** Please See Response to Comment CIEAEtA11 – Excerpt 8

Letter: **KBPomo1**, Pg8, P1

COMMENT

Excerpt: 10

Type: Proposed Guidance for Designation

Evidence in Designating Beneficial Uses

On Pg. 111 the Plan text states that *"The Water Boards should not rely solely upon anecdotal evidence in designating beneficial uses."* The State of California has precedence for including Traditional Ecological Knowledge as an admissible form of written or oral testimony. This information has been successfully and accurately provided by Tribal cultural practitioners including information that has been received from Tribal elders, Tribal Historic Preservation Officers, Environmental Directors or by Tribal Councils.

We are also concerned that the following statement violates tenants of treaty rights and aboriginal law: *"However, it may not be reasonable to designate a beneficial use, and by extension apply applicable water quality objectives, if only one individual is using the water in a way that would meet the beneficial use definition."* There are some cases in when there is one practitioner from a Tribe responsible for carrying out cultural activities that may place them at risk from exposure to mercury. Their safety should be protected since these individuals are culturally important to the Tribe as a whole and their well-being is paramount to the cultural continuance of the People.

Recommendation:

- That SWRCB staff work with California Tribes to create a guidance document at the state level to for Regional Water Boards on the process required and what evidence will be required in order for California Tribes to designate beneficial uses at the regional board level.
- That the Plan text either strike the statement as to the number of cultural practitioners that must be completing activities of a use or qualify it with California Tribal guidance and Consultation related to cultural use.

<ul style="list-style-type: none"> • Response: Please See Response to Comment CIEAETAI1-9. 			
Letter: KBPomo1 , Pg8, P4	COMMENT	Excerpt: 11	Type: Modify Definition
<p><u>Expand Examples of Trophic Level 4 Fish</u></p> <p>We note that in the definition of TL4 fish sturgeon is not included in the definition of TL4. Sturgeon is actually mentioned only once in the entire Plan. This particular species and other TL4 traditional fish that are not listed are important to many Northern California Tribes for subsistence and for additional cultural uses.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • Include sturgeon in the definition section of the Plan text as follows: <p style="padding-left: 40px;">TROPHIC LEVEL 4 FISH (TL4): Fish that consume TROPHIC LEVEL 3 fish and other aquatic organisms. Examples of these species include largemouth, smallmouth, spotted, and striped bass; brown and lake trout; white and green sturgeon; catfish, and Sacramento pike minnow. Examples are shown in Attachment C.</p>			
<ul style="list-style-type: none"> • Response: Please See Response to Comment CIEAETAI1-10. 			
Letter: KBPomo1 , Pg9, P1	COMMENT	Excerpt: 12	Type: Add Text/SB 52
<p><u>Include information regarding Tribal Consultation</u></p> <p>We note that in several places in the Plan and appendices information is provided regarding Early Public Consultation per CEQA. For example related to section 2.6.3 the Plan text states that:</p> <p style="padding-left: 40px;">"Early Public Consultation/Scoping CEQA requires the State Water Board to seek early public consultation with public agencies and members of the public prior to circulating the draft SED. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a).) The consultation may include one or more scoping meetings to engage the stakeholders and public agencies early in the planning and formulation stages of the project to scope the range of actions, alternatives, reasonably foreseeable methods of compliance, significant impacts, and cumulative impacts, if any, that should be analyzed in the study and mitigation measures that will reduce impacts to a less than significant level, and to eliminate from the project any elements found not to be important (Cal. Code Regs., tit. 23, § 3775.5, subd. (b))"</p> <p>This is one of example of the many opportunities that the Water Board has to include CEQA requirements for Tribal Consultation under AB52, SB18 and Executive Order B10- 11.</p>			

Recommendation:

- That information regarding Tribal Consultation be including adjacent to or within the above paragraph and in other appropriate locations the Plan text and that the Plan clearly cite federal Executive Order 13175, Executive Order B-10-11, SB18 and information on AB52 to better assist agencies and stakeholders regarding their responsibilities regarding Consultation with California Indian Tribes. The following is recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, "Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes." Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self-government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52 [sic]

We recommend that Tribally developed Consultation policies also be included as an appendix or as a URL link to those polices. One example is the policy developed by the Karuk Tribe.

- **Response:** Please See Response to Comment CIEAETAI1-11.

Letter: KBPomo1 , Pg10, P5	COMMENT	Excerpt: 13	Type: Minor Revision
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Table 2-2. Focus Group Meetings for the Beneficial Uses Group Location,

We noted that in Table 2-2 the meeting in July 2016 with Northern California Tribal Representatives states that the location was in "Loleta (Eureka)." This should be revised since Loleta and Eureka are distinct cities.

Recommendation:

- The meeting took place in *Loleta not Eureka*. We recommend simply removing Eureka from that location descriptor.

Response: Please see Response to Comment CIEAETAI1-12

Letter: KBPomo1 , Pg11, P1	COMMENT	Excerpt: 14	Type: Statement of Necessity
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Statement of Necessity for Beneficial Uses

In section 3.2: Statement of Necessity for Beneficial Uses, the Water Board includes information as the purpose, intent and reasoning behind State Water Board Resolution No. 2016-0011, which formally directs staff to develop and define proposed beneficial use definitions that pertain "to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals." (Resolve Clause No.1).

Subsequently, the SWRCB has heard statements by Tribal representatives and Tribal staff as to why these beneficial uses are necessary. Some of the information provided on the differences between COMM, RECI, CUL and T-SUB may be of use in this document. Specifically, we noted clear testimony to the differences related to timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

Recommendation:

- That the Plan text in 3.2 be revised to include the following bracketed text as follows:

these beneficial uses are necessary because existing beneficial uses do not take into account the greater consumption of finfish and shellfish by some cultures or [individuals or the spatial or temporal distribution of such activities. The State Water Board will consider adopting the beneficial use] definitions proposed by staff as part of the Provisions in order "to create a consistent set of beneficial uses to be used" (State Water Board Resolution No. 2016-0011, Resolve Clause 4) by the Regional Water Boards to the extent a Regional

Water Board defines such activities in a water quality control plan ...

Response: Please See Response to Comment CIEAETAl1-13.

Letter: **KBPomo1**, Pg11, P4 | COMMENT | Excerpt: 15 | Type: Revision

Inclusion of Clear Fish Consumption Messaging

In Appendix U, section 1 the Plan text states that messaging is difficult. CIEA has provided fish consumption advice to California Indian and low-income families since 2003 and there are simple ways to convey fish consumption advice utilizing studies already cited in this document (Oken 2008), which may be helpful to include in this document.

Also in the same paragraph the Plan text includes fisheries considerations as the source of fish. In California Wild-caught fish are not always related to fisheries and therefore its use is confusing in the final sentence.

Recommendation:

- Amend this paragraph to include the following bracketed Plan text:

At the same time, these studies also show a beneficial effect of eating fish. Oken and colleagues discusses the wide range of trade-offs facing fish consumers and the difficulties in evaluating current fish consumption advice (Oken et al. 2008). [However, the study by Emily Oken et al. does provide clear information that can be summarized clearly for patients as follows: mothers who eat 3 meals per week of a low mercury fish during pregnancy provide their babies with measurable neurological benefits, while those who eat even 1 meal per week of fish high in mercury put the developing fetus at-risk to neurological impairments. (Oken et al. 2008, CIEA 2012)] Consumers need to consider not only the contaminant concentrations in fish but also their nutritional value, the sustainability of the fish they choose, [the habitat that supports the fish fishery,] and the cost of different fish choices.

- **Response:** Please See Response to Comment CIEAETAl1-14.

Letter: **KBPomo1**, Pg12, P2 | NOT COMMENT | Excerpt: 16 | Type: Greet/Ending

Thank you for your time. We look forward to assisting the Mercury Program and in implementing the Plan in the future. If you have any questions or would like any information on our comments and recommendations we are very happy to assist.

- **Response:** Comment noted.

TheOCPWO

Author: Chris Crompton **Title:** Manager **Organization(s):** Orange County Public Works

Address: 300 N. Flower Street, Santa Ana, CA 92703

Date: 1/30/2017

Contact person: Chris Crompton

Phone: 714-955-0630

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Letter: TheOCPW0, Pg1, P1	COMMENT	Excerpt: 1	Type: Request: More Time
<p>The County of Orange (County) respectfully requests that the State Water Resources Control Board (State Board) extend the time period for submission of written comments to the Proposed 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 Mercury Provisions (“the draft Provisions”) and Draft Staff Report, including the Draft Substitute Environmental Documentation (SED), by a minimum of 60 days, or at least until April 17, 2017. In doing so, the County echoes similar requests of other stakeholders, including the California Stormwater Quality Association, the Association of California Water Agencies, the California Water Association and the California Municipal Utilities Association. Additionally, the following Cities have asked to be included as concurring entities on this request: Brea, Dana Point and Lake Forest.</p>			
<p>Response: Please See Response to Comment WSPA2-2 and 18.</p>			
Letter: TheOCPW0, Pg1, P2	COMMENT	Excerpt: 2	Type: Request: More Time
<p>On January 3, 2017, State Board staff released the draft Provisions and above-referenced related documents, providing a 45-day comment period, with written comments due by noon on February 17, 2017. The draft Provision, Draft Staff Report and SED together consist of over 700 pages of proposals, complex analysis and technical appendices. More importantly, the draft Provisions propose the adoption of three new beneficial use definitions, five new mercury water quality objectives, and an implementation program, actions which have potentially significant and far-reaching regulatory impacts. MS4 dischargers such as the County are amongst the entities who will be potentially subject to regulation, administrative enforcement and civil litigation concerning the draft Provisions. Under the circumstances, a 45-day period is woefully inadequate to allow for full digestion of the information provided, let alone the formulation of incisive comment. Interested parties and stakeholders require more time to fully comprehend the draft Provisions and related documents, identify questions for State Board staff, and provide the State Board with comprehensive and informed comment.</p>			
<p>Response: Please See Response to Comment WSPA2-2 and 18.</p>			
Letter: TheOCPW0, Pg2, P1	COMMENT	Excerpt: 3	Type: Request: More Time

Responses to Comments—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 Mercury Provisions.

While the State Board may be embarking on this expedited rulemaking process to adopt the Provisions by the June 30, 2017 deadline imposed on the U.S. Environmental Protection Agency (“EPA”) in the Consent Decree issued in *Our Children’s Earth Foundation v. U.S. Environmental Protection Agency* (Case No. 3:13-cv-2857-JSW), the County would note that the State Board is not subject to the Consent Decree, including the June 30, 2017 deadline for the EPA to propose water quality criteria for mercury to protect aquatic life and aquatic-dependent life. Thus, an expedited rule making process is not required here. Further, as noted in the request for extension submitted by the Association of California Water Agencies, the California Water Association and the California Municipal Utilities Association, the Consent Decree provides for an automatic extension of the June 30 deadline. Should the State Board wish to exercise its prerogative to promulgate mercury water quality objectives instead of EPA, efforts should be made to work with EPA to seek the court’s extension of the June 30 deadline, in the compelling interest of providing for a robust and informed rule making process.

Response: Please See Response to Comment ACWA1-19.

Letter: TheOCPW0, Pg2, P2	NOT COMMENT	Excerpt: 4	Type: Greet/Ending
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Your consideration of this request for an extension of the comment period concerning the draft Provisions is much appreciated. If you have any questions, please contact me at (714) 955-0630. Sincerely, Chris Crompton, Manager Water Quality Compliance

Response: Comment noted.

CCEEB1**Author:** Gerald D. Secundy **Title:** CCEEB President **Organization(s):** California Council for Environmental and Economic Balance**Address:** 101 Mission Street, Suite 1440, San Francisco, California 94105**Date:** 1/27/2017**File Name:** CCEEB SWRCB Mercury Tribal Subsistence Fishing Ltr - Final**Contact person:** Gerald D. Secundy **Phone:** 415-512-7890 **E-mail:** [Click here to enter text.](#)

Letter: CCEEB1, Pg1, P1	COMMENT	Excerpt: 1	Type: Split the Project
On behalf of the California Council for Environmental & Economic Balance (CCEEB), we must convey our serious concerns with the current timeline, process, approach and requisite impacts associated with the current proposed Tribal, Tribal Cultural & Subsistence Fishing Beneficial Uses and Statewide Mercury Water Quality Objectives under the Inland Surface Waters, Enclosed Bays & Estuaries Plan. In this regard, we respectfully urge the Board to move to bifurcate the proposals so as to provide additional opportunity to work on the technical, widespread impacts this will have on all dischargers in the state.			
Response: See Responses to Comments WSPA2-2, WSPA2-3, and ACWA1-19.			
Letter: CCEEB1, Pg1, P2	NOT COMMENT	Excerpt: 2	Type: Author Description
CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.			
Response: Comment noted.			
Letter: CCEEB1, Pg1, P3	COMMENT	Excerpt: 3	Type: Request: More Time
The current proposal would have significant, widespread ramifications that CCEEB members and others are working to understand. Unfortunately, however, the timeline to do so is quite tight given the 724 page Draft Staff Report and associated documents and comment deadline of February 17 th . Given the highly technical and substantial documentation needing to be reviewed and understood as well as the significant and widespread impacts it will have on dischargers throughout the state, we would appreciate an alternative approach be undertaken for this proposal.			
Response: See Response to Comment WSPA2-2 and 18.			
Letter: CCEEB1, Pg1, P4	COMMENT	Excerpt: 4	Type: Split the Project
As discussed at the State Water Resources Control Board's (SWRCB) Board meeting last week, Board members discussed the proposal and			

Responses to Comments—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 Mercury Provisions.

<p>concerns raised by Board Member D’Adamo. One of the suggestions offered to ameliorate the concerns 2 she has with the proposal was to bifurcate the proposal so as to address the short-term need to respond to the USEPA Consent Decree deadline by June relative to the Wildlife Mercury Water Quality Objective (WQO). It was shared that such an alternative approach could then permit further discussion, outreach and technical work on the other pieces of the proposal to address the concerns raised.</p>			
<p>Response: Please see Responses to Comments WSPA2-2 and 3.</p>			
Letter: CCEEB1, Pg2, P1	COMMENT	Excerpt: 5	Type: Split the Project
<p>CCEEB strongly urges the Board to revise its approach to this proposal and bifurcate the Wildlife Mercury WQO from the other provisions in the proposal so as to allow additional time for stakeholders to understand the technical nature and widespread impacts it will have going forward. Notably, the proposal provisions, while interconnected, are actually in fact distinct, far reaching proposals. Further, while the development of the new Tribal, Tribal Cultural and Subsistence Fishing beneficial uses are being proposed in conjunction with the Mercury provisions, they will have broader impact on many other contaminants for which permit limits will be established and/or significantly decreased in association with the higher fish consumption rates tied to these new beneficial uses. We can appreciate that they will not go into effect unless a regional board designates specific water bodies with such as part of their Basin Plan amendment process.</p>			
<p>Response: Please see Responses to Comments WSPA2-2 and 3.</p>			
Letter: CCEEB1, Pg2, P1	COMMENT	Excerpt: 6	Type: Guidance for Beneficial Uses
<p>However, the Board and staff have thus far declined to develop substantive guidance regarding the designation of site specific values for Mercury, much less the other contaminants that will be tied to their use.</p>			
<p>Response: Please see Response to Comment WSPA2-8,34, CVCWA1-36 regarding guidance, and Response to WSPA2-20 regarding other pollutants.</p>			
Letter: CCEEB1, Pg2, P2	COMMENT	Excerpt: 7	Type: Split the Project
<p>We appreciate your consideration of these concerns and urge the Board to bifurcate the proposals going forward. We believe this is critical and a fair compromise to address the needs of the state to comply with the Consent Decree in the short term while we work on the other pieces that will have detrimental impacts for all municipal and industrial dischargers in the state.</p>			
<p>Response: Please see Responses to Comments WSPA2-2, 3 and ACWA1-19.</p>			
Letter: CCEEB1, Pg2, P3	NOT COMMENT	Excerpt: 8	Type: Greet/Ending
<p>If you have any questions regarding the items highlighted in this letter, please contact CCEEB Water, Chemistry and Waste Project Manager Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993 or CCEEB Water Quality Task Force Consultant Susan Paulsen at (626) 463-7075. Thank you.</p> <p>Sincerely,</p>			

Gerald D. Secundy
CCEEB President

Response: Comment noted.