April 9, 2008

Dr. Karl Longley, Chair
Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Draft Methylmercury TMDL for the Delta – February 2008 Version

Dear Dr. Longley:

The undersigned organizations continue to have serious concerns with the proposed "Basin Plan Amendment to Control Methyl and Total Mercury in the Sacramento-San Joaquin Delta Estuary (Delta.)" Despite the fact that Regional Board Members directed staff to work with our organizations to address the issues we raised at the March 2007 TMDL workshop, there has been very little outreach by Regional Water Board staff, and virtually no substantive effort to resolve those issues. This conclusion is reflected by the fact that the February 2008 version of the Mercury TMDL is very similar to the earlier draft and, if anything, it is even less acceptable.

Chief among all of our concerns about this Mercury TMDL is the fact that more than three-quarters of all methylmercury loading into the Delta comes from "open water" and "tributary" sources which are not addressed in the proposed TMDL. The source of this methylmercury loading is the sediment underneath these waters. California law clearly establishes that these waters are owned by the People of California and, as such, the State should be held accountable for reducing these loads.

It is unfair and unreasonable for this TMDL to impose costly studies and potential load reductions on private property owners, local public agencies, and non-profit groups that construct and maintain wetlands and wildlife areas, when the State is effectively given a "free pass" for the large majority of mercury load to the Delta. Many of the parties listed above are simply the unfortunate recipients of mercury that was transported from state lands and through state owned and controlled channels. These parties had no role in creating the mercury deposited on their lands and had no ability to block its deposition. As such, the expense potentially being assigned to the parties for monitoring or control of methylmercury is unreasonable. As just one example, according to the TMDL Staff Report, February 2008, costs are estimated in the millions of dollars for the studies of wetland sources plus annual costs of up to $270,000 to implement best management practices.

Clearly, it is time to consider allocating substantial mercury load reductions and study requirements to the State of California. This allocation is critical for policy discussion given the restoration objectives being developed by the Bay Delta Conservation Plan and its pivotal role in meeting the objectives of the Governors Executive Order S-17-06 establishing Blue Ribbon Task Force to develop a durable vision for the management of the Delta. Both the Delta Vision and the Bay Delta Conservation Plan are proposing restoration of thousands of acres to tidal influence and dredging to improve hydrodynamic function. Considering these diverse and necessary objectives, we believe it is critical that the Regional Water Board be fully informed of the water quality and habitat objectives that are desired and have a clear understanding where objectives can be complimentary or in the worst case mutually exclusive.

We believe the Regional Board should consider a modified approach to the Mercury TMDL that has a more realistic chance of achieving the goal of a “fishable” Delta. This modified approach can build on much of what your staff has developed over the past couple of years, and calls for State responsibility to substantially help fund the Phase 1 studies to characterize methylmercury controls in the Delta. The State of California has already accepted this responsibility, in part, through $30 million of comprehensive scientific mercury research conducted by CalFed. The State’s ongoing responsibility under this TMDL should include a clear synthesis of the results of that research as well as funding to support the methylmercury studies required under Phase 1 and 2 of this TMDL, in proportion to the load contributions (75% from tributaries and open water sources).

Background

In June 2006, the Regional Water Board staff issued for public review a draft Basin Plan Amendment that would embody the anticipated Delta Mercury TMDL. In sum, that draft TMDL: (1) acknowledged that very little is known about methylmercury and particularly how to control methylation; (2) established specific methylmercury load allocations for sources of methylmercury to the Delta (*similar to Attachment A although numbers were slightly different in 2006*); (3) required load allocation recipients to perform characterization and control studies; and (4) established a methylmercury water concentration “goal” of 0.06 ng/L that would go into effect in 2014.

By letter dated November 17, 2006, a stakeholder group consisting of the California Rice Commission, California Waterfowl Association, Central Valley Clean Water Association, City of Sacramento Department of Utilities, City of Vacaville, Ducks Unlimited, Northern California

Water Association, Sacramento Regional County Sanitation District, County of Sacramento, and The Nature Conservancy (Stakeholders), submitted to Regional Water Board Executive Officer Pamela Creedon an "alternative approach for the Delta Methylmercury Basin Plan Amendment" (Attachment B). That "alternative approach" called for fundamental changes in the proposed TMDL, embodying a "different, more comprehensive, long-term approach [to] mercury reduction efforts." The stakeholders noted that the approach proposed in the draft TMDL "would have profound impacts on…environmental and public health, particularly those associated with wetland management and restoration within the Delta." The stakeholders requested a re-examination of the approach to mercury management to ensure that it would be based on a sound scientific foundation and advocated the use of creative and flexible compliance approaches, including mercury offsets, while methylation control studies are underway.

A second draft of the TMDL and related Basin Plan Amendment was released in February 2007 for public comment, and a public workshop was held before the Regional Water Board on March 16, 2007. At that public workshop, many interested stakeholders voiced their general and specific concerns about the overall ***process*** by which the Mercury TMDL was being developed (that is, insufficient collaboration with stakeholders) as well as the focus and approach being taken to address mercury impairment of the Delta.

The "alternative approach" proposed in November 2006 was essentially ignored by staff, which was pointed out at the workshop by representatives of the Stakeholders. During the March 2007 Regional Water Board workshop, several Regional Water Board members asked focused questions and raised specific issues related to, for instance, fish tissue standards, the need for methylmercury water concentration limits, potential roadblocks to mercury "offset" projects, and an overall concern that the Phase 1 TMDL would not lead to meaningful actions to control mercury levels in fish tissue.

Salient questions asked during the March 2007 workshop include:

"I would like to see real good peer review data when that comes back……If that science base isn't there, we have to look for a new direction" Karl Longley regarding fish tissue and concentration limits -- peer review, p. 174 beginning line 22,

"Is imposing a mercury concentration limit going to get us to our goals of cleaning up mercury? Aren't we really just concerned about mercury in fish?" Kate Hart regarding mercury offsets, p. 175, line 6.

"I don't know why we would only be addressing 6% of the mercury in the entire Delta and not the actual tributaries that are contributing to this problem, and I think we're putting the cart before the horse. And correct me if I am wrong. I hope I am wrong." Kate Hart regarding Delta contributions to mercury loading, p. 193, beginning line 5:

In February 2008, a third draft Basin Plan Amendment and associated staff reports were released. This third draft TMDL shows few substantive changes since the February 2007 draft and still ignores the "alternative approach" ideas advocated by the Stakeholders in November 2006. The February 2008 draft TMDL also fails to substantively address many of the issues and questions raised by Regional Water Board members during the March 2007 public workshop.

In sum, the February 2008 draft TMDL continues to acknowledge that very little is known about most methylmercury sources, how to control them, and how controlling source contributions of methylmercury will affect fish tissue. Despite this significant conclusion about the state of knowledge, the February 2008 draft (1) establishes specific methylmercury load reduction requirements for some of the sources of methylmercury to the Delta (*e.g.*, agriculture, wetlands, municipal and industrial wastewater, urban stormwater and major tributaries); (2) requires specific load allocation recipients to perform characterization and control studies; and (3) establishes a water concentration "goal" of 0.06 ng/L for methylmercury that would go into effect as early as 2016. In addition, the February 2008 draft TMDL asserts that attainment of the methylmercury load allocations will result in attainment of the fish tissue targets. We fail to see how the February 2008 draft supports such a profound conclusion.

Issue Discussion

The February 2008 draft TMDL recognizes that, based on the current state of science, very little is known about how to control sources of methylmercury affecting the Delta. Furthermore, it is unknown if controlling only those methylmercury sources identified in this TMDL will actually change ambient water concentrations and ultimately reduce mercury concentrations in fish. However, despite these many unknowns, the draft TMDL asserts that attainment of methylmercury load allocations will result in meeting fish tissue targets. To our knowledge, there is not sufficient information to make the assertion, which is the basis for the load allocations proposed. The purpose behind Phase 1 of the TMDL is to characterize sources and study ways to control methylmercury. Once this information is developed, then appropriate load allocations and controls can be identified. Until that time, the proposed TMDL goals, allocations and required controls currently included in the draft are premature and unsupported by current science.

As Attachment A shows, at best, the draft TMDL may lead to an unknown reduction (not elimination) in only about 25% of all methylmercury loading to the Delta. The remaining **75% of all current sources of methylmercury to the Delta would not be controlled under this TMDL**. The implication that future TMDL's in the tributaries and open water sources will effectively achieve the desired reductions for 75% of the methylmercury load is unsubstantiated. Furthermore, the claim is untenable considering the huge challenge of finding any effective and reasonable methylmercury controls. In short, this TMDL ignores 75% of the methylmercury load. This TMDL only proposes to study 25% of the load to determine if they are controllable and if they are, determine if controlling these loads will attain the fish tissue goals. In reality, the ability to achieve the reductions in fish by controlling 25% of the load is unknown. Further, the notion of manipulating wetlands for the purpose of controlling ambient water concentrations of methylmercury in the Delta could thwart other ongoing and proposed efforts to restore essential Delta ecosystem function. One should recognize that loss of critical habitat is one of the likely consequences that could result from a narrowly focused control strategy, such as limiting natural methylation pathways in Delta wetlands in the effort to control methylmercury production. For example, recent work by the Governor's Delta Vision Blue Ribbon Task Force identified "[h]igh priority ecosystem revitalization projects should be pursued aggressively…." These projects would involve considerable wetlands restoration, and as such the Assembly is now considering legislation (AB 2502) to create a wetlands restoration fund to restore tidal wetlands on three Delta islands. The current focus of Phase 1 of this TMDL on methylmercury allocations is

premature, fatally flawed and cannot reasonably be expected to result in the anticipated reductions in fish tissue concentrations cited by Regional Water Board staff.

A Modified Approach

Key elements of a modified approach proposed by the undersigned stakeholders include:

1. **The State must establish the means to fund the methylmercury characterization and control studies** required during Phase 1 of the February 2008 draft TMDL. This important work will appropriately inform the Regional Water Board whether and when it is appropriate to establish methylmercury load allocations. It is unacceptable that this TMDL assigns no responsibility to the State of California to address 75% of the methylmercury load which comes from open water and tributary sources. Gold mining legacy sources of mercury are spread throughout much of the waters of the State. The modified approach proposed by the stakeholders offers a fair approach by the State of California to fund characterization and control studies, in proportion to its methylmercury load contribution to the Delta.

Central to this modified approach is the expectation that the characterization and control studies are not only predicated on a strong scientific foundation, but that the results of these studies and holistic analysis of the effectiveness of future methylmercury controls on reducing fish tissue concentrations in the Delta should be subject to independent scientific peer review. This modified approach will provide the Regional Water Board and all stakeholders with a better understanding of ***what*** can be done, by ***whom***, ***when***, and at ***what*** cost.

2. **Establish an appropriate fish tissue standard to protect beneficial uses now and into the future.** We support the fish tissue standard proposed by Regional Water Board staff in the February 2008 draft Mercury TMDL.

3. **Recognize the current limitations on the ability to control methylmercury from various identified sources.** The characterization and control studies performed in Phase 1 of the Mercury TMDL are intended to provide the Regional Board and all stakeholders with better, more current information about the controllability of methylmercury from the identified sources. The level of effort and resources required for characterization and control studies should be linked to the relative magnitude of the source. In addition, the TMDL should include flexibility for dischargers to combine resources for these studies on a regional and watershed basis. This would facilitate a stronger focus on the most important sources and areas of interest, rather than forcing expensive studies of relatively insignificant sources.

4. **Create early incentives for the removal and control of *total mercury* from the Delta and upstream watersheds.** The state of current science cannot tell us how to control methylmercury loading to the Delta. Reliance on ***total*** mercury rather than methylmercury load allocations is consistent with the approach taken in the San Francisco Bay mercury TMDL and other TMDL's nationwide. When the Phase 1 studies are complete, the Regional Water Board will be better informed as to what can be controlled and at what cost. Until then, it is unknown whether the methylmercury allocations can be met or if they are even needed. Therefore, it is most appropriate to focus our current mercury removal and control strategies on mercury sources that we *do* know how to control, which are ultimately part of the long-term solution. By focusing our removal and control strategies on **total mercury** while the Phase 1 methylmercury

studies are being done, we have the best chance to effect *both* total *and* methylmercury reductions in the Delta now and into the future. Again, the State should share proportionally in funding these total mercury offset projects.

5. **Eliminate the water concentration "goal" and develop methylmercury allocations at the end of Phase 1 based on outcome of characterization and control studies.** The methylmercury water concentration goal is not necessary and is redundant if a fish tissue standard is adopted. Establishing a water concentration "goal" (or target, limit, trigger, or standard) before the Phase 1 studies have been completed is premature. The purpose of Phase 1 is to determine if reducing sources will attain the desired levels in fish. Without this information, the proposed goal and allocations are unsupported by science. In the face of what could be completely "uncontrollable" tributary and open water sources, the question of attainability of the goal and allocations becomes paramount. Further, point source dischargers view the proposed water concentration goal as an eventual permit limit which cannot be met without major treatment plant modifications. This increased treatment comes at a price that includes higher energy demands and greenhouse gas emissions to both construct and operate those facilities. These same point source dischargers are those most likely, able, and willing to perform pilot "offset" projects and other collaborative roles in the future development of the TMDL. The costs of treatment to meet the goal will obviate their interest in implementing offset projects.

6. **Require the development and implementation of remedial actions by the State of California to reduce the contribution of legacy mercury in the watershed by at least half, as part of a comprehensive effort to achieve the TMDL.** As discussed earlier in this letter, reduction in the legacy component is absolutely essential if the goals in this TMDL are ever to be achieved in the Sacramento Valley watershed. To propose costly measures on other sources when upwards of 75% of the problem goes un-addressed is bad public policy and will not achieve regulatory goals.

We appreciate this important opportunity to comment on the Draft TMDL and provide a modified approach to the current staff proposal. We believe that our modifications will more effectively lead to a defensible and acceptable TMDL that will enable mercury load reduction projects and long-term reduction in fish tissue levels in the Delta.

Sincerely yours,

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California Rice Commission

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Director of Conservation Policy
California Waterfowl Association

Jacqueline McCall
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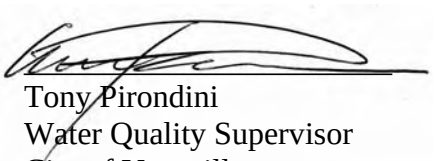

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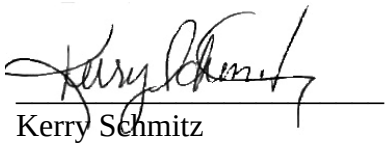

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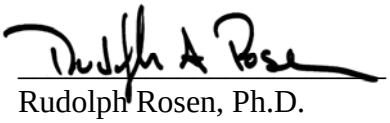

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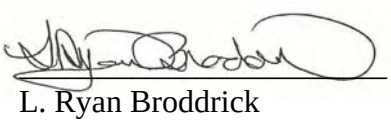

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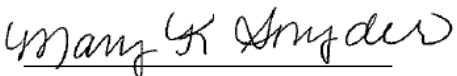

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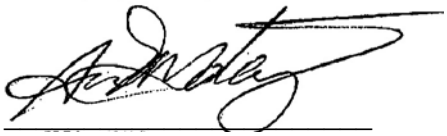

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cc. Senator Darrell Steinberg
Assemblymember Lois Wolk
Tam Doduc, State Water Resources Control Board Chair
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Katherine Hart, Central Valley Regional Water Quality Control Board
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Cheryl Maki, Central Valley Regional Water Quality Control Board
Sandra Meraz, Central Valley Regional Water Quality Control Board
Pamela Creedon, Regional Water Quality Control Board
Patrick Morris, Regional Water Quality Control Board

Summary of Methylmercury Loads & Reductions:
Proposed Mercury TMDL for the Sacramento-San Joaquin Delta

Table A
Agriculture Methylmercury Allocations

Delta Sub-Area Receiving Source Input	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Central Delta	37	0%	37
Marsh Creek	2.2	83%	0.37
Mokelumne & Consumnes Rivers	1.6	49%	0.82
Sacramento River	36	44%	20
San Joaquin River	23	75%	5.8
West Delta	4.1	0%	4.1
Yolo Bypass	19	84%	3
Sub-Total: Agriculture Sources	123		70.7

Table A
Wetland Methylmercury Allocations

Delta Sub-Area Receiving Source Input	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Central Delta	210	0%	210
Marsh Creek	0.34	83%	0.058
Mokelumne & Consumnes Rivers	30	49%	15
Sacramento River	94	44%	53
San Joaquin River	43	75%	11
West Delta	130	0%	130
Yolo Bypass	480	84%	77
Sub-Total: Wetlands Sources	987.3		496.1

Table B
Municipal & Industrial Wastewater Methylmercury Allocations

Sub-Area	Source	Existing Load (g/yr) *ref. Feb 07 BPA*	% Reduction Required *ref. Feb 07 BPA*	Load Allocation (g/yr)
Central Delta	Discovery Bay WWTP	0.42	0%	0.37
	Lodi (City of) White Slough WWTP	0.92	0%	0.93
	San Joaquin Co. DPW 31-Flag City WWTP	0.007	0%	0.007
	Unassigned Allocation for New Discharges	0	0%	.30
Marsh Creek	Brentwood (City of) WWTP	0.085	73%	0.14
	Unassigned Allocation for New Discharges	0	0%	.12
Sacramento River	Rio Vista (City of) WWTP	0.11	44%	0.06
	SRCSD – Elk Grove Walnut Grove WWTP	0.24	44%	0.13
	Sacramento (City of) Combined WWTP	0.43	44%	0.24
	SRCSD Sacramento River WWTP	160	44%	90.0
	West Sacramento (City of) WWTP	0.40	0%	0.62
	Unassigned Allocation for New Discharges	0	0%	8.4
San Joaquin River	Deuel Vocational Inst. WWTP	0.013	0%	0.02
	Manteca (City of) WWTP	1.4	72%	0.38
	Oakwood Lake Subdivision Mining Recl	0.40	0%	0.38
	Stockton (City of) WWTP	36	75%	9
	Tracy (City of) WWTP	1.9	59%	0.77
	Unassigned Allocation for New Discharges	0	0%	2.2

* *Tables, information and data presented herein are taken from the February 2008 Draft Mercury TMDL for the Delta, except where shaded values from February 2007 Draft Mercury TMDL Basin Plan Amendment (BPA).*

***Many inconsistencies in required % reductions occur between February 2008 BPA and February 08 staff report.*

Sub-Area	Source	Existing Load (g/yr) *ref. Feb 07 BPA*	% Reduction Required *ref. Feb 07 BPA*	Load Allocation (g/yr)
West Delta	*Unassigned Allocation for New Discharges*	0	0%	0.57
Yolo Bypass	Woodland (City of) WWTP	.26	0%	0.40
	Unassigned Allocation for New Discharges	0	0%	0.42
Sub-Total: Municipal & Industrial Wastewater Sources (Sub-Total: February 2008 staff report)		202.59 (205.69)		115.45

Table E

Urban Stormwater Methylmercury Allocations

Sub-Area	Source	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Central Delta	Contra Costa (County of)	0.75	0%	0.75
	Lodi (City of)	0.053	0%	0.053
	Port of Stockton MS[4]	0.39	0%	0.39
	San Joaquin (County of)	0.57	0%	0.57
	Stockton Area MS[4]	3.6	0%	3.6
Marsh Creek	Contra Costa (County of)	1.2	75%	0.30
Mokelum.River	San Joaquin (County of)	0.045	49%	0.023
Sacramento River	Rio Vista (City of)	0.014	44%	0.0078
	Sacramento Area MS[4]	1.8	44%	1.0
	San Joaquin (County of)	0.19	44%	0.11
	Solano (County of)	0.073	44%	0.041
	West Sacramento (City of)	0.65	44%	0.36
	Yolo (County of)	0.073	44%	0.041
San Joaquin River	Lathrop (City of)	0.27	75%	0.068
	Port of Stockton MS[4]	0.01	75%	0.0025
	San Joaquin (County of)	2.2	75%	0.55
	Stockton Area MS[4]	0.50	75%	0.13
	Tracy (City of)	1.8	75%	0.45
West Delta	Contra Costa (County of)	3.2	0%	3.2
Yolo Bypass	Solano (County of)	0.085	75%	0.021
	West Sacramento (City of)	1.1	75%	0.28
	Yolo (County of)	0.33	75%	0.083
Sub-Total: Urban Stormwater Sources		18.9		12.03

Table G

Open Water Methylmercury Allocations

Source	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Central Delta	370	0%	370
Marsh Creek	0.18	83%	0.031
Mokelumne River	4.0	0%	4.0
Sacramento River	140	0%	140
San Joaquin River	48	0%	48
West Delta	190	0%	190
Yolo Bypass	100	84%	16
Sub-Total: Open Water Sources	852.18		768

Table H

Tributary Watershed Methylmercury Allocations

Sub-Area	Source	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Central Delta	Calaveras River	26	0%	26
	Bear/Mosher Creeks	11	0%	11
	Bethany Reservoir Area	TBD	0%	TBD
Marsh Creek	Marsh Creek	1.9	82%	0.34
Mokelum.River	Mokelumne River	110	70%	33

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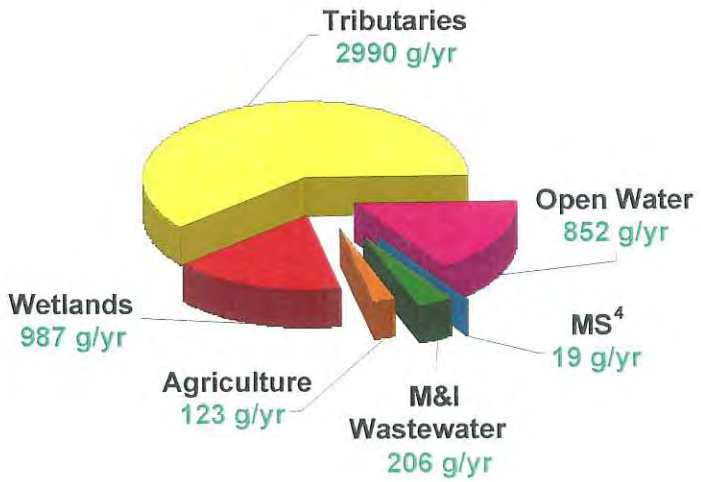
***Many inconsistencies in required % reductions occur between February 2008 BPA and February 08 staff report.*

Sub-Area	Source	Existing Load (g/yr)	% Reduction Required	Load Allocation (g/yr)
Sacramento River	Sacramento River	2000	50%	1000
	Morrison Creek	7.5	50%	3.8
San Joaquin River	San Joaquin River		69%	110
	French Camp Slough	360	64%	4.0
	Manteca-Escalon, Mountain House & Corral Hollow Creeks Areas	11	0%	TBD
West Delta	Antioch & Montezuma Hills Areas		0%	TBD
Yolo Bypass	Cache Creek Settling Basin	TBD	92%	14
	Cache Slough/Lindsey Slough/Dixon Areas	TBD	79%	0.76
	Fremont Weir	140	50%	90
	Knights Landing Ridge Cut	3.6	74%	26
	Putah Creek	180	72%	3.1
	Ulatis Creek	100	79%	2.0
	Willow Slough	11	79%	3.8
	Prospect Slough			
Sub-Total: Tributary Watershed Sources		2990		1327.8
Total: All Sources		**5177**		**2790**

Synopsis of Methylmercury
Loads & Reductions By Source Category

Source (percentage of all sources)	Existing Load (g/yr)	Load Allocation (g/yr)
Tributary Watersheds (58%)	2990	1328
Wetlands (19%)	987	496
Agriculture (2%)	123	71
Open Water (17%)	852	768
Municipal & Industrial Wastewater (4%)	206	115
Urban Stormwater (<1%)	19	12
Total All Sources	**5177**	**2790**

Uncontrollable Sources:
4953 g/yr
- or-
96%



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***Many inconsistencies in required % reductions occur between February 2008 BPA and February 08 staff report.*

November 17, 2006

Ms. Pamela Creedon
Executive Officer
Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Dear Ms. Creedon:

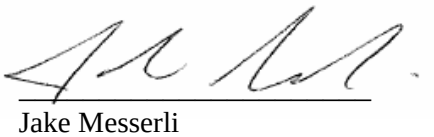
The undersigned organizations continue to have serious concerns with the direction that the proposed "Basin Plan Amendment to Control Methyl and Total Mercury in the Sacramento-San Joaquin Delta Estuary (Delta)" appears to be heading. We respectfully request a meeting with you to discuss and help formulate alternative approaches to the current staff proposal that we believe can more effectively address health issues related to fish and will advance a sound regulatory process to accomplish public health objectives.

The attached document presents an overview of an alternative approach that recognizes the unique nature of methyl and total mercury in the Delta. Most importantly, the approach calls for a comprehensive and scientific evaluation to characterize methyl-mercury in the Delta, which is a critical foundation to assure an effective regulatory strategy for the Regional Board. Moreover, we believe a broad and diverse working group convened by the California Environmental Protection Agency (CALEPA) and the Water Boards can assist in framing the characterization studies and can help secure the necessary funding for these important efforts.

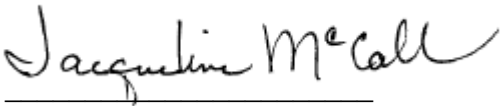
We look forward to talking with you at your earliest convenience.

Sincerely yours,

Paul Buttner
Manager, Environmental Affairs
California Rice Commission

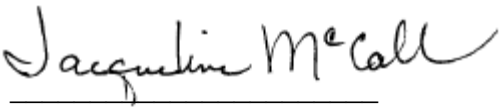


Jake Messerli
Director of Waterfowl and Wetland Programs
California Waterfowl Association



Jacqueline McCall
Chair, Water Committee
Central Valley Clean Water Association

Bill Busath
Supervising Engineer
City of Sacramento



Jacqueline McCall
Water Quality Manager
City of Vacaville

David Tamayo
Environmental Specialist
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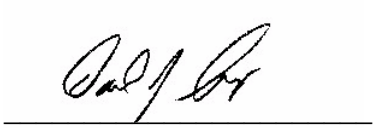
Dave Widell
Director of Conservation Policy
Duck's Unlimited



David J. Guy
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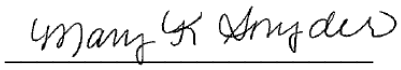
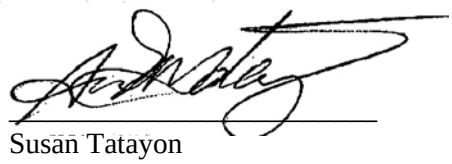


Mary K. Snyder
District Engineer
Sacramento Regional County Sanitation District



Susan Tatayon
Assistant Director
California Freshwater Initiative
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cc: Water Boards

AN ALTERNATIVE APPROACH FOR THE DELTA METHYLMERCURY BASIN PLAN AMENDMENT

Methylmercury Calls for a Different Approach. Mercury and methylmercury are different than the other impairments being addressed by the Regional Board. It is widely recognized by scientists that mercury is a relic pollutant, present in Central Valley watercourses as a result of historic mining and natural erosion. Mercury is not a pollutant that is added to the waterways by any current land uses or water management and the effects of mercury in our watersheds today are not the responsibility of today's water managers, wetlands managers or landowners. For this reason, the traditional Total Maximum Daily Load (TMDL) model simply does not work for mercury or methylmercury.

The current Regional Board staff proposal follows the traditional TMDL model by arbitrarily pre-assigning responsibility for load allocations throughout the region and then mandating unspecified entities and/or individuals to prepare ad-hoc control studies to help answer questions about mercury in the system, the discharge of mercury and the process of methylation. This proposal, if adopted, would have profound impacts on a variety of state and federal mandates and objectives aimed at improving environmental and public health, particularly those associated with wetland management and restoration within the Delta and its watersheds. A different, more comprehensive, long-term approach is necessary and would be more appropriate for mercury reduction efforts.

The Need for Comprehensive and Coordinated Control Studies. There is general agreement that additional characterization and control studies are necessary for mercury and methylmercury. Rather than proceed in the proposed manner haphazardly by pre-assigning responsibility to unspecified entities for mercury load allocations in the Delta and Central Valley, a more sound approach would be for California Environmental Protection Agency (CALEPA) and the Water Boards, in coordination with resource agencies and others, to convene a working group to help frame and coordinate the necessary characterization studies. This workgroup would help develop a strategic over-arching plan to study mercury and its methylation in the Delta and could help secure funding for the effort to develop a feasible TMDL. The results from this coordinated approach would then guide future regulatory actions by the Central Valley Regional Board and could serve as a model for addressing mercury impairments in the rest of the state.

The Control Studies Should Begin with a Strong Scientific Program. A good starting foundation for this effort is the 2003 "Mercury Strategy for the Bay-Delta Ecosystem: A Unifying Framework for Science, Adaptive Management and Ecological Restoration" that was prepared for the Bay-Delta Authority. Here, the CALFED Bay-Delta Program coordinated an aggressive effort to look at mercury in the Bay-Delta over the past decade and has conducted numerous studies and made several recommendations that would help inform the state agencies on a comprehensive study plan for methyl and total mercury. We are waiting for the final review

and synthesis of this $30 million program. We are confident that this comprehensive approach will be completed more quickly and be more comprehensive than the ad-hoc studies by individual entities that will emerge from any pre-assignment of responsibility.

The Regional Board Should Pursue Flexible Tools to Address Mercury that Do Not Pit Environmental Objectives Against One Another. Under the TMDL regulations, the Regional Board can provide reasonable assurances that load allocations will be developed when the science supports an allocation and there is a methodical way to allocate responsibility in a legally appropriate manner. While the control studies are underway, creative and flexible compliance approaches can and should be immediately pursued with interested parties. This should include an offset program and should recognize the broad and diverse scope of wetland habitat types in the Central Valley that are managed in different ways at different times of the year.

The State of California Should Fund These Studies. Californians all share the concern about mercury and methylmercury in fish and other wildlife. As a relic pollutant, controlling mercury is a large societal issue that is in the public interest and the characterization studies and related work should be supported by broad public funding from throughout the State. The proposed "Mercury Monitoring and Remediation Fund" proposed in AB 2901 (Wolk) or a similar mechanism would help serve this purpose.