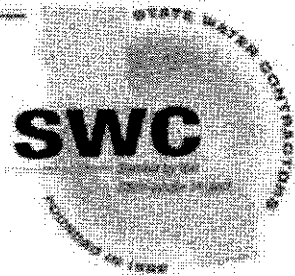
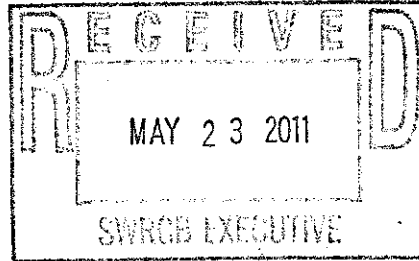


May 23, 2011



Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-2000



Dear Ms Townsend:

The State Water Contractors, Inc., ("SWC") submit this letter on behalf of the SWC and its 27 member agencies.<sup>1</sup> The SWC or any of its member agencies may participate in these proceedings in the future. These comments address the State Water Resources Control Board's approval of amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to include a program for the control of methylmercury and total mercury in the Sacramento-San Joaquin Delta Estuary. The Central Valley Regional Water Quality Control Board ("Regional Board") has already adopted the Basin Plan Amendments ("BPA") to the Water Quality Control Plan for the Sacramento-San Joaquin Delta Estuary TMDL for Methylmercury and associated Staff Report dated April 2010.

The SWC requests that the State Water Resources Control Board not approve the above referenced documents because the Regional Board failed to adequately address comments and the suggested actions are not reasonable.

On April 7, 2010 the SWC provided comments to the Regional Board and generally joined the Department of Water Resources ("DWR") comments regarding the Central Valley Regional Water Quality Control Board's proposed BPA and associated Staff Report. As previously stated, the SWC generally support the Central Valley Regional Water Quality Control Board's efforts to identify methods to control methylmercury in the Delta.

**DIRECTORS**

**Stephen Arakawa**  
President  
Metropolitan Water District  
of Southern California

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Kern County Water Agency

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**Steven Robbins**  
Coachella Valley Water  
District

**Ray Stokes**  
Central Coast Water  
Authority

**General Manager**  
Terry Erlewine

<sup>1</sup> The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley East Kern Water Agency; Casitas Municipal Water District on behalf of the Ventura County Flood Control District; Castaic Lake Water Agency; Central Coast Water Authority on behalf of the Santa Barbara County Flood Control & Water District; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; The Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo County Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; and, Tulare Lake Basin Water Storage District.

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The SWC support certain portions of the proposed BPA and TMDL for controlling both methyl and total mercury to reduce fish tissue values to levels that are safe for fish, wildlife and Delta anglers. In particular, the SWC agree it is important to identify actions to reduce production of methylmercury from dredging and habitat restoration activities. However, the Regional Board's responses do not adequately address the comments previously submitted.

For example, the SWC commented that a majority of the mercury occurring in the Delta was due to historical activities, not water management. Thus, it was not appropriate to assign the entire open water allocation to DWR and two other State agencies. Specifically, a large portion of the mercury occurring in the Delta is due to mercury abundance in naturally occurring minerals and rocks of the California Coast Range and Sierra Nevada, which will continue to erode and be deposited in the State's water bodies through natural processes. Another major contributor to mercury issues in the Delta is from anthropogenic activities, primarily historic mercury mining concentrated in the Coast Range, and gold recovery concentrated in the Sierra Nevada foothills and eastern valley. As detailed below, the Regional Board's comments do not adequately respond to these comments.

The Regional Board allocates DWR a portion of the open water allocation for its water management activities. However, the Regional Board does not have jurisdiction over DWR's operation of the State Water Project ("SWP") because these activities do not constitute a "discharge" under the Clean Water Act. The mere movement of water is not "loading" that should be subject to the TMDL. Specifically, 40 CFR section 130.2(e), which defines the terms "load" or "loading" to mean an "amount of matter . . . that is *introduced into* a receiving water." While "loading" may occur through man-caused (pollution loading) or natural (natural background loading), the definition requires the introduction of something "into" the receiving water. Here, all that is occurring is the movement of water through the system, an activity that would occur regardless of DWR/SWP activities. Thus, it is inappropriate for DWR, and in turn the SWP contractors represented by the SWC, to be responsible as discharging entities for purposes of funding Phase 1 implementation studies. Yet the BPA requires "dischargers of methylmercury" including DWR, and in turn the SWP contractors, to conduct studies related to control methods.

Furthermore, despite the Regional Board recognizing several other agencies are responsible for the type of activities affecting open water methylmercury production and transport, they assigned responsibility only to DWR and two other State agencies. Specifically, the proposed BPA describes the activities subject to the open water methylmercury allocation as "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." (Resolution No. R5-2010-0043 at p. 11.) The BPA goes on to identify the agencies responsible for the activities listed above and includes, U.S. Army Corps of Engineers, State Water Resources Control Board and the U.S. Bureau of Reclamation. (*Ibid.*) Despite the recognition that several other entities engage in the same activities, only DWR, the Central Valley Flood Protection Board and the State Lands

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Commission were assigned the open water allocation. In its response to comments, the Regional Board completely fails to address this issue. (See Response to DWR Letter Comment #5.)<sup>2</sup>

SWC previously commented that SWP operations actually help reduce mercury in the Delta. However, in its response to comments, the Regional Board failed to acknowledge or address this issue adequately, and instead simply assigned responsibility to DWR, and in turn the SWP contractors, for water management operations. Again, it should be noted that DWR's operation of the SWP are actually beneficial to containing methylmercury and mercury. As noted in the April 2010 Staff Report, "sediment yield is reported to have declined by 50 percent since 1957." The April 2010 Staff Report attributes these reductions to "the reduced supply of erodible material since cessation of hydraulic mining and increased trapping of sediment in reservoirs." (Staff Report, p. 134.) Thus, SWP operations help trap sediment, including mercury, in upstream reservoirs so it is not released downstream into the Delta.

SWC also expressed concerns that "the implementation of the TMDL not interfere with or cause to become infeasible (including financially infeasible) the development of large scale habitat programs to benefit the Delta system." The Regional Board comments do not adequately respond to this comment. Specifically, while the Regional Board recognizes the importance of restoration projects and states that it will work with parties "to assure restoration efforts move forward while at the same time doing studies to determine how to effectively reduce methylmercury and inorganic mercury sources," it does not provide support for such assurances. It is insufficient for the Regional Board to just defer addressing restoration assurances by only referring to required analysis at an unspecified date.

If you have any questions regarding the SWC comments, please contact at (916) 447-7357, ext. 203.

Sincerely,



Terry L. Erlewine  
General Manager

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<sup>2</sup> To the extent responsibility is assigned to DWR acting in its capacity other than as the operator of the SWP, such that the SWC are not charged for this activity, the SWC has a similar, but somewhat muted objection. In other words, numerous agencies are responsible for activities affecting open water methylmercury production and transport and responsibility should be allocated accordingly. If the state chooses to allocate responsibility to General Fund departments and activities, such that taxpayers are held responsible for the legacy portion of the problem, the SWC has less objection. However, the SWC does recommend that efforts be made to first identify those actors who are directly responsible for current and historical actions that cause mercury to be introduced into the system as well as those actions that affect open water methylmercury production and transport.