



January 24, 2017

Public Comment
Beneficial Uses and Mercury Objectives
Deadline: 2/17/17 12 noon



Chair Felicia Marcus & Members
State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814

via email to: commentletters@waterboards.ca.gov

Re: *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)*

Dear Board Members:

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. 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.

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.

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. 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). 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.

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, 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

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. 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

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.

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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.

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 as the remaining mercury water quality objectives.

Thank you for considering our request to separate these two regulatory actions as described.

Sincerely,



Craig S.J. Johns
Program Manager

cc: Felicia Marcus
Fran Spivey-Weber
Tam Doduc
DeeDee D'Adamo
Stephen Moore