



February 16, 2017



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

**Subject: Comment Letter – Beneficial Uses and Mercury Objectives**

Dear Ms. Townsend:

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”).

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.

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 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.

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.

Again, thank you for the opportunity to comment.

Sincerely,



Thomas Lo  
Water Quality Administrator

cc: (via email): Joseph Kirkpatrick, Chief Building Official  
Victor Kao, Principal Plan Check Engineer  
Jeremy Jungreis, Esq., Rutan & Tucker