

DEPARTMENT OF WATER RESOURCES

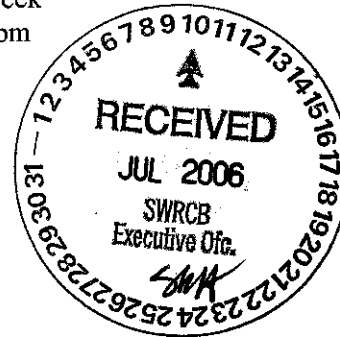
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Mercury in Cache Creek
Deadline: 7/10/06 5pm



July 10, 2006

Ms. Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: Comment Letter – Plan for Control of Hg in Cache Creek.

Dear Ms. Her:

Thank you for the opportunity to comment on the Plan for Control of Mercury in Cache Creek. The Department of Water Resources (DWR) is interested in the plan because it affects our ability to maintain channels of the flood control project on Cache Creek, including the Cache Creek settling basin, that are essential to protecting the safety of people and property in Woodland and the surrounding area.

DWR shares the Board's concerns about the adverse effects of mercury on the environment of Cache Creek and the waterways downstream from the creek. But we worry that it will be difficult to implement the TMDL policies which affect the flood control facilities DWR maintains on Cache Creek. The attachment to this letter describes in more detail our concerns about how the TMDL may affect maintenance of the flood control project.

- Uncertain application to the Cache Creek settling basin. SWRCB and Central Valley RWQCB staff informed us that this TMDL does not apply to the Cache Creek settling basin. The language of the amendment, however, describes it as applying to "Clear Lake to the Yolo Bypass". This would include the settling basin, which is immediately upstream of the Yolo Bypass, and 11 miles of DWR-maintained flood control channel upstream from the settling basin.
- Erosion control in 10-Year Floodplains. The TMDL's use of the 10-year floodplain creates a new jurisdictional definition that will be difficult to define and is inconsistent with those used by other regulators, such as Army Corps of Engineers 404 regulations.
- Disposal of sediment from flood control channels and the settling basin. The TMDL proposes rules for removing and disposing of sediment from the settling basin and the creek's flood control channels that may prove unreasonably expensive or infeasible.

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- Management of settling basin sediment. The removal of settling basin sediment to offset mercury discharges elsewhere in the basin may be less feasible than the TMDL suggests, reducing the feasibility of this effort to provide some flexibility in the TMDL's implementation.
- Turbidity monitoring. The turbidity monitoring recommended in the TMDL will be costly, but is likely to add little useful information about the effects that small projects, like flood control maintenance, have on mercury loads and discharges.

We believe simple revisions of the TMDL's proposed policies can minimize these problems without increasing risks to public health or water quality from mercury and methyl mercury. We would welcome the opportunity to meet with your staff to discuss ways to resolve our concerns about the TMDL. DWR staff will attend your hearing on the TMDL, where they will be available to answer any questions that you may have about this letter.

Sincerely,



Keith Swanson, Chief
Flood Maintenance Office

cc: Oscar Balaguer
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814.

Bill Marshall
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Department of Water Resources
Flood Management Division
Cache Creek TMDL Comments

Uncertain application to the Cache Creek settling basin. SWRCB and Central Valley RWQCB staff informed us that this TMDL does not apply to the Cache Creek settling basin, which would instead be dealt with in the pending Delta Mercury TMDL. The language of the amendment, however, describes it as applying to "Clear Lake to the Yolo Bypass". This would include the settling basin, which is immediately upstream of the Yolo Bypass, and 11 miles of DWR-maintained flood control channel upstream from the settling basin. DWR has provided the RWQCB staff extensive comments about how the Delta TMDL may impede DWR's flood control project maintenance and affect other department functions. A simple way to address our concerns about the Cache Creek mercury TMDL would be to apply it only to those areas above the Sacramento River Flood Control Project's Cache Creek Levees and Settling Basin Unit. This would exclude the lower 11 miles of Cache Creek where DWR maintains the flood control channel and the settling basin from this TMDL. Instead, this reach could be addressed in the Delta Hg TMDL, so that the regional and state board could consider these plans' effects on flood control project maintenance in a single plan and rulemaking process.

Erosion Control in 10-Year Floodplains. The proposed amendment's proposals to control erosion in 10-year flood plains may create unnecessary burdens on flood control project maintenance and ambiguity in their implementation. Maps of 10-year floodplains are not readily available. Even experts like DWR struggle when required to divert time and talent that could be applied to core missions to complex determinations of whether we are subject to permit requirements. Other agencies or individuals will be faced with even greater challenges in defining the area subject to this 10-year floodplain regulation.

Moreover, we believe the amendment is incorrect when it defines the 10-year floodplain as the area subject to Clean Water Act Section 401 certifications, at least in situations when these are required for Section 404 permits. Our understanding is that 404 requirements extend only to water of the United States, which the Corps of Engineers' regulatory guidance indicates would typically be areas within the 2-4 year flood plain, and to adjacent wetlands, rather than to the 10-year floodplain. If the plan must define an area where special erosion controls are required, we would encourage you to refer to the more widely applied 404 standard of 33 CFR 328.3(a) and the Corps of Engineers regulatory guidance letter 05-95 or its successors, rather than introducing a new standard of a 10-year floodplain.

Disposal of sediment removed from channels and the settling basin. The requirement that sediment removed from channels or the settling basin be placed outside the floodplain so it will not erode to the creek needs clarification. If the objective is to minimize the reintroduction of this sediment to the creek, a simpler standard that sediment removed from channels or the settling basin must be placed so it will not

erode to the creek should suffice. A floodplain cannot be defined, as proposed in the basin plan amendment, without reference to storm event (e.g., a 100 year floodplain). Moreover, as our understanding of flood control systems improve, we are learning that when levees overtop or fail, even areas behind them can become part of a floodplain.

Sediment removed from the settling basin by prior flood maintenance actions has not eroded back into the creek, but is nevertheless often placed in the floodplain where it is used as construction material. In the past, for example, material from the settling basin has been used to improve existing levees or to elevate building pads – activities that may fall within a “floodplain”, strictly defined, but that pose little risk of sediment eroding back into the creek.

Removal of settling basin sediment to offset other sediment discharges. Management of sediment in the settling basin is subject to a complex web of flood maintenance responsibilities, State and federal environmental regulations, and maintaining agencies’ operational capabilities. For these reasons, removing sediment from the settling basin to offset sediment discharged at other sites may be easier said than done. DWR may welcome opportunities to partner with others in removing sediment from the basin in some situations, but at other times it may prove impractical.

Turbidity monitoring. We share the concerns about the cost of turbidity monitoring expressed in Yolo County’s September 25 2005 letter to the regional board. While such monitoring may be appropriate for large projects, it should not be required of flood control project maintenance or other routine activities.

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