STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

**DELTA PROTECTION COMMISSION**
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April 24, 2008

Chairman and
Members of the Central Valley
Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

Re: February 2008 Draft "Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary"

Dear Members of the Board,

Thank you for providing this opportunity to review the subject documents (hereafter "Basin Plan Amendment or BPA"). The full report includes proposed amendments to Basin Plan language, followed by several attachments explaining the amendments. Comments provided in this letter focus on the BPA. These comments are submitted to you on behalf of the Delta Methylmercury TMDL Collaborative (Collaborative).

In late 2005, the State of California's Delta Protection Commission (DPC) convened a collaborative of Delta stakeholders representing local, state, federal agencies and non-profits – see attached list – to provide input to your Board for consideration in the development of a TMDL and Implementation Plan for Methylmercury in the Delta. It was and continues to be the desire of the Collaborative to provide input to the Regional and/or State Board's efforts to satisfy mandates imposed by the U.S. Environmental Protection Agency, and to assist the Board in developing meaningful and realistically feasible programs to do so.

The Collaborative has spent time over the last two and one-half years reviewing documents produced by Board staff, participating in public workshops and providing comments to the Board. Previous correspondence from the Collaborative is attached.

Several members of the Collaborative came together in April of this year to discuss its views of the current BPA documents. What follows is a listing of concerns and possible different approaches offered by the following organizations who participated in the 2008 Collaborative: Yolo County, Yolo HCP/NCCP Joint Powers Authority, Yolo County Flood Control and Water Conservation District, The Nature Conservancy, Sacramento Regional County Sanitation District and the Delta Protection Commission.

Our focus is on how previous Collaborative correspondence has been taken into consideration by Board staff in the current documents. The Collaborative shares the same goals as the Regional Board to reduce mercury exposure to people and wildlife that consume Delta fish, and to remove it from the environment. However, we feel there is a more effective approach than that taken by Board staff in the Program Plan of Implementation to meet the TMDL requirements.

**Summary of significant issues raised by the Collaborative over the past 2 years**

- Concern over impact of BPA on other beneficial activities in the Delta and Yolo Bypass;
- Concern over lack of benefit/cost analysis that takes into account the costs to reduce mercury by beneficial activities in the Delta such as habitat creation, flood control, agriculture, wastewater treatment and dredging;
- Concern that the Delta BPA is limited by the Basin Plan Amendments already in effect for Cache Creek and San Francisco Bay;
- Creation of a funding burden to in-Delta interests for an environmental legacy issue of statewide concern and a lack of funding to accomplish objectives

**Current concerns of the 2008 Collaborative participants**

*Focus on legacy sources of total mercury. Pursue State and federal funding to reduce legacy source loads.*

- The sources of total mercury should be the primary focus of control and be weighted much more heavily for control efforts than projects such as habitat creation or alternative flood control approaches that have public benefit mandates. To add a large burden of financial cost and lost time through "characterization and control studies" to new public benefit projects is unreasonable compared to expending more control effort on the legacy sources of mercury.

*Do not require stakeholders to spend limited resources answering basic scientific questions.*

- The BPA process should be more comprehensive than the science of TMDL setting to include the practicality of implementation and recognizing the potential negative impacts on other important public benefit issues in the Delta. The BPA will significantly increase the cost of any public benefit projects done in the Delta and consume time that could be critical. A very localized population is being required to shoulder significant costs. It is not reasonable to place a burden on new projects having public benefit objectives, being funded with public funds, to reduce mercury which has largely been created by legacy sources.

*Recognize and coordinate better with other on-going Delta processes.*

- As stated in the Collaborative's letter of November 18, 2005 to the Board, it is critical that the other significant public processes underway in the Delta be identified and collaborated with in the BPA process. While TMDLs must be set based on science, the Program Plan of Implementation is the place where, for the most effective and practical

approach to achieving the TMDLs, integration with the other Delta planning processes must take place. We do not find that recognition of these other very important public processes has occurred and therefore it does not appear that integration or collaboration has occurred: this is an opportunity lost to be most effective with scarce public funds and equally important, balance competing pubic objectives.

*Add language to allow for over-riding considerations*

- It is problematic that the TMDL documents do not specify the methods staff is using to determine "potential for increase" in methylmercury and mercury. It is unsettling not to know how the Regional Board staff will measure potential increase. There needs to be a definition of what is going to trigger various mitigation requirements and how and what entity will determine if mitigation is appropriate or sufficient.
- Regional Board staff should not determine what is adequate project mitigation for mercury reduction due to the fact that there are competing public benefit objectives in the Delta. The Executive Officer of the Board should be given this responsibility which was done in Basin Plan Amendment language the Regional Board approved for Cache Creek in Yolo County for habitat creation. This language should be extended to flood control, dredging and other publicly important types of projects in the Delta. Examples of this language for Cache Creek are:

  *"Upon written request by project proponents, the Executive Officer may waive the turbidity monitoring requirements for a project, or group of projects, if the project proponents submit an alternative method for assessing compliance with the turbidity objective."*

  *"The Executive Officer may waive, consistent with State and federal law, the requirement for erosion control from a project conducted in the 10-year flood plain for habitat conservation or development activities for bank swallows that are proposed under the State's adopted Bank Swallow Recovery Plan."*

The Collaborative recommends that the Regional Board extend the time for completing the Program Plan of Implementation so that a truly collaborative process among all Delta stakeholders, professionally facilitated, can be conducted in order to have the most effective chance at real and sustainable reductions of mercury in the environment and achievement of other very important public benefit goals in the Delta. In addition, the Regional Board should pursue state and federal funds for remediation of abandoned mines.

In closing, the Delta Mercury Collaborative appreciates this opportunity to comment on the work of the Regional Board staff and requests the Board engage all stakeholders in this issue in a collaborative effort. Please contact Suzanne Butterfield, Deputy Director for Special Projects, Delta Protection Commission, at 916-776-2291 with any questions for the Collaborative.

Sincerely,

Linda Fiack

Linda Fiack, Executive Director
Delta Protection Commission
on behalf of the Delta Mercury Collaborative

cc: Delta Mercury Collaborative
Arne Simonsen, Chairman, Delta Protection Commission

Attachment