

**Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) and
Basin Plan Amendment**

**Stakeholder Informational Meeting
Draft Meeting Summary**

MEETING DATE: November 4, 2009

LOCATION: Activities and Recreation Center, UC Davis, Meeting Room 1
232 ARC One Shields Avenue Davis, CA 95616

ATTENDEES: See attachment

ACTION ITEMS

	ITEM	OWNER
1	Distribute Chapter 3 of the February 2008 staff report to the Stakeholder Group.	Janis Cooke, Regional Water Board
2	Review Chapter 3 of the February 2008 staff report for completeness, paying particular attention to the text regarding factors that need to be considered when determining “reasonableness”.	Stakeholder Group
3	Clarify how dredging projects will be incorporated into this TMDL process	Patrick Morris, Regional Water Board
4	Provide examples of what an incentive program would look like	Stakeholder Group
5	Review Basin Plan Amendment (BPA) and identify any missing assurances	Stakeholder Group
6	Post the Draft Offsets document on the project website	Christal Love, Center for Collaborative Policy (CCP)
7	Send out doodle poll soliciting availability for subsequent Offset, Memorandum of Intent (MOI) and Environmental Justice meetings	Christal Love, CCP
8	Create questions regarding how the Environmental Justice community is viewed and involved and distribute to dischargers	Janis Cooke, Regional Water Board

Meeting Purpose

- Review and discuss the BPA key issues
- Review and refine the Memorandum of Intent (MOI)

- Ratify the Guiding Principles
- Discuss the Offsets Work Group outcomes and next steps
- Discuss the Environmental Justice Caucus outcomes and next steps

Welcome, Introductions, and Agenda Review

Dave Ceppos, CCP Facilitator, opened the meeting, discussed facility logistics, meeting materials and asked meeting participants to introduce themselves. He then reviewed the meeting agenda, and provided a walkthrough of the day's materials/handouts.

Introductory Comments by Executive Officer Creedon

Pamela Creedon, Regional Water Board Executive Officer, welcomed everyone to the meeting and stated that the Delta MeHg TMDL was one of her three top priorities. She then reviewed the TMDL milestones thus far, and stated that the Regional Water Board Staff (Staff) have tried to be as inclusive as possible and honor the Stakeholder Process. She reaffirmed that the Regional Water Board is listening to all Stakeholder Groups as they provide input and will continue to do so in the future.

Stakeholder comments / questions to Ms. Creedon are summarized below:

Stakeholder Comment: I'm concerned about the wording in the Stakeholder Charter; I voted no on the draft Charter because of my concerns with wording on page 1, lines 14 and 15 regarding "reasonable protection" of humans and wildlife. I was under the assumption that because the TMDL is created in compliance with the federal Clean Water Act (CWA), the TMDL should have a purpose as defined by the more stringent federal statute, rather than a purpose defined by the more flexible California Porter-Cologne Act. This issue was also brought up by the U.S. Environmental Protection Agency (U.S. EPA).

Staff Response: The concern raised by the U.S. EPA regarded the need for the BPA to be in line with the Clean Water Act. The current fish tissue objective levels in the proposed BPA are at a rate of one meal per week. Staff have added text that states that the fish tissue level target number will be reevaluated in the future. When the BPA refers to the term "protection" it is referring to what actions it is going to take to protect people. Staff has tried to stay away from terms such as "reasonable".

U.S. EPA Response: The U.S. EPA abstained from voting on the Stakeholder Charter because it is a non-binding document and because it does not support the purpose statement in the Charter as written. The Clean Water Act does not require you to take into account economics as Porter-Cologne does, it is meant to protect beneficial uses. We suggest discussing this issue in the context of the BPA rather than the Stakeholder Charter.

Staff Response: There is text in the BPA Staff Report regarding factors that need to be considered when looking at reasonableness. Request that Stakeholder review the text and inform Staff if there are missing elements (see **Action Items 1 and 2**).

Stakeholder Comment: Which takes precedence: the Porter-Cologne Water Quality Control Act or the Clean Water Act?

Staff Response: The stricter regulation applies. The Regional Water Board is obligated to look at the factors of each regulation. The basic definition is that all water needs to be usable and fishable.

Stakeholder Comment: There is a range of what “fishable” means. That range needs to be captured in the BPA.

Stakeholder Comment: The “reasonably protect” language is different than “reasonably implement”. Economic considerations will not trump public health. There are rates of consumption out there that say one meal per week only protects half the people fishing in the Delta. Do not recommend waiting until 2018 to implement actions.

Stakeholder Comment: Expect the fish tissue objectives to be protective of Endangered Species Act listed species.

Stakeholder Comment: The voting process in the Stakeholder Charter is important because it has the potential to override minority consideration. Consider this a Working Group rather than a Stakeholder Group.

CCP Response: The Stakeholder Charter memorializes rules of engagement. The intent is to see if there is a way to reach consensus. The role of this Stakeholder Group is to provide advice, but it does not supersede the Regional Water Board requirements. When there is the opportunity to identify consensus, it will be memorialized, when no consensus can be reached that too will be memorialized is summaries of the Group’s discussions.

Review Key BPA Issues

Patrick Morris, Staff, gave a presentation on what he identified as three key outstanding BPA issues.

1. Components of the Exposure Reduction program: including who should be responsible for development, funding, and implementation of the Exposure Reduction Program?
(Lines 112-120)
2. Control requirements for Phase 1 (Line 18):

“During Phase 1, all dischargers shall implement reasonable, feasible control options for inorganic mercury.

All dischargers should implement methylmercury management practices identified during Phase 1 that are reasonable and feasible. However, implementation of methylmercury management practices identified in Phase 1 is not required by the Mercury Control Program until the Regional Water Board has completed the Phase 1 Delta Mercury Control Program Review and has developed the tributary mercury control programs.”

3. Adding a Monitoring program for NPS (Lines 38 ,76, 130):

“A monitoring program and compliance points for nonpoint sources, irrigated agriculture and managed wetlands methylmercury allocations shall be developed during the Control Studies.”

The Group then discussed the issues and provided the following comments.

Issue 1: Components of the Exposure Reduction program

Staff Comment: The language provided is a placeholder in the BPA that is intended to reduce harm to people eating fish while the MeHg reductions are being made. Asked the Stakeholder Group if the language was adequate, if more details were needed and who would fund and coordinate this effort.

CCP Question: Is the Stakeholder Group willing to create partnerships that support and create exposure reduction opportunities?

Stakeholder Response: Pointed to the policy campaign against smoking as an example this Stakeholder Group could follow, suggesting that dischargers bear the cost of cleaning up MeHg, transferring the cost to all citizens served by a discharger (for example in the form of a small water rate increase). Commenter stressed the importance of an ongoing public outreach campaign.

Stakeholder Comment: Do not get the sense that all Stakeholders are on board with communities actually being included in this process. Concerned that the Regional Water Board has funding for facilitation but not community groups; which makes it appear that the Regional Water Board is just trying to present an image of inclusion without the desire to do so. Staff still needs to find funding to allow for community engagement and such funding needs to be directly available to affected communities, not an afterthought with lots of overhead taken off the top before it gets to the affected people. Suggest that dischargers provide funding for community groups to engage, and increase mutual understanding of each others positions.

Stakeholder Comment: The information regarding MeHg needs to get out to the affected communities. It is insulting to be asked to come to meetings if there are no funds to compensate for people’s time. Since this is a public health issue the dischargers should pay for community participation. If the funds are not available then this Stakeholder Process is simply a show case.

Stakeholder Comment: The exposure reduction program includes lessening the amount of fish consumed; this situation needs to be part of the review process because if there is a new fish consumption number the future numbers will be based on incorrect data.

Stakeholder Comment: The exposure reduction program shows up as a mitigation measure because it is going to take awhile to clean up pollution. Funding of communities should be tied to the discharge permits. If this Stakeholder Group intends to have exposure reduction, then it

needs to be a condition of the permit. Administrative performance is not a condition of success. The desired health structure outcome is a condition. The performance evaluation needs to come from the affected communities.

Stakeholder Comment: Exposure reduction is a goal, however, only 10 percent of the MeHg comes from dischargers. The vast majority of it is in the waterways. In this TMDL, a discharger is anyone who turns total Mercury into MeHg. Concerned that there would be unfair responsibilities placed on point source dischargers. This MeHg problem is not going to be solved quickly. The exposure reduction program will need to deal with fish consumption reduction. This Stakeholder Group does not have any funding from the State, or commitment from the State to fund reduction programs.

Stakeholder Comment: Funding responsibility should be assigned by the percent of responsibility.

Stakeholder Comment: Should create a Work Group to actually work on what will occur during Phase 1. There should be opportunities for dischargers and affected communities to partner and find outreach and exposure reduction opportunities

Stakeholder Comment: Not all dischargers make money from the discharge and not all of the dischargers are associated with public entities. There are private wetlands built to benefit wildlife that are also dischargers. Very often the discharges from these private wetlands are due to flood events.

Stakeholder Comment: During Phase 1, the only dischargers who are going to have permits and requirements will be point source dischargers. It would be difficult for the point source discharge community to have a grass roots group linked to discharge permits.

Stakeholder Comment: This is something that should be at least partially financed by dischargers. Discharging MeHg into the waterways is not a right. The Bay Area Regional Water Quality Control Board put language regarding this issue into their TMDL. The affected communities should help develop the program; concerned that the decision-making will fall to those who have a discharge permit.

Stakeholder Comment: Large amounts of total Mercury in the waterways were deposited there through atmospheric deposition. There are other sources of Mercury such as federal agencies, personal vehicles and business industries. When are they going to be included?

Staff Response: The current BPA contains the framework; it will take a couple of years to develop the implementation plan. Right now Staff think they are including most of the major State and Federal agencies; however, the number of responsible parties will likely increase.

Stakeholder Comment: Need to look at existing public health programs that may already be working on exposure reduction. It might be possible to leverage existing funds and programs.

U.S. EPA Comment: The U.S. EPA will never consider funding community groups as an offset program.

Staff Comment: Supplemental Environmental Projects might be able to be used to fund additional projects.

Stakeholder Comment: The proposed text should have room for community participatory research and the ability for communities to be able to experiment with MeHg clean up.

Issue 2: Control requirements for Phase 1

Mr. Morris explained that this issue came down to the use of the words “should” and “shall”. He then asked for feedback on the proposed text.

Stakeholder Comment: What is the definition of feasible?

Staff Response: Feasible has not been defined yet.

Stakeholder Comment: The purpose of Phase 1 is to figure out what control methods work and which do not; any mandatory activities are not appropriate until Phase 1 evaluations are done and the adjustments to the BPA have been made. “Shall” should not be used at this point.

Stakeholder Comment: What is the difference between implementing Pollution Minimization Programs and control options?

Staff Response: Staff will review the use of the word “control”.

Stakeholder Comment: There is uncertainty with both “shall” and “should”. Staff should list what the requirements are in the BPA in order for Stakeholders to know what they are agreeing to.

Stakeholder Comment: Recommend creating a definitions page for the TMDL.

Staff Response: The terms “reasonable” and “feasible” came from members of the Stakeholder Group and have not been defined yet. Staff might be able to make list of requirements.

Stakeholder Comment: The sooner this Stakeholder Group deals with sources of total Mercury the better. What is considered to be reasonable in the beginning of Phase 1 may be very different than what is considered reasonable at the end of Phase 2. Phase 1 language needs to be consistent with how the Regional Water Board does its permitting processes.

Stakeholder Comment: Request information regarding how dredging would be incorporated into this process (see **Action Item 3**).

Staff Comment: Stakeholders should bring forward ideas of what an incentive should look like (see **Action Item 4**).

Issue 3: Adding a Monitoring program for Non-point Source Dischargers

Mr. Morris explained that the Staff is trying to evaluate whether they should develop a monitoring program for non-point source dischargers during the early part of Phase 1. Mr. Morris explained that he did not intend the program to include monitoring each and every wetland.

Stakeholder Comment: Assumed the Phase 1 studies would study how to monitor non-point source discharges. Monitoring discharges from wetlands is not simple. Need to figure out how to do the monitoring before being required to conduct it.

Stakeholder Comment: Want to make sure this Stakeholder Group is not going to take eight years to develop a monitoring plan.

CCP Question: Is Staff using the term monitoring as a means to assess compliance, or does it mean to address the effectiveness of actions? There is a difference.

Staff Response: Staff is looking at monitoring to develop the baseline conditions. The TMDL included allocations based on monitoring. Regional monitoring programs will be important.

Stakeholder Comment: Who does Staff envision doing these monitoring programs for non-point source dischargers?

Staff Response: Monitoring responsibility will need to be figured out, and may not be included in the BPA.

Stakeholder Comment: Need a conceptual model of how the MeHg gets into the system and when it is in transport.

Stakeholder Comment: Do Staff think it is reasonable that this Stakeholder Group would have regional monitoring data by the end of Phase 1?

Staff Response: Regional monitoring will be implemented before the end of Phase 1. The stormwater dischargers were able to put in monitoring programs when initially they had the same concerns that the non-point source dischargers are raising now.

Stakeholder Comment: The Surface Water Ambient Water Monitoring Program (SWAMP) use fees to sample ambient water.

Staff Response: The rules governing the ability of entities to use SWAMP money has recently been curtailed by the State Water Resources Control Board.

MOI Work Group Report Back and Discussion

Mr. Ceppos briefly explained the MOI process thus far and then reviewed the action items from the October 28th MOI Work Group meeting. The group made the following comments regarding the status of the MOI Work Group.

Stakeholder Comment: Agree with the direction the MOI Work Group is going.

Staff Comment: Need to know what assurances Stakeholders think are currently missing from the BPA (see **Action Item 5**). There will be an evaluation check in point built into the BPA; the MOI can include a tracking mechanism to help do this.

Stakeholder Comment: Important to start with the work that the Regional Water Board has already done. They have been working on this for years. It is important for this Stakeholder Group to start Staff would like to be and grow from there.

Offsets Work Group Report Back

Stephen McCord, Larry Walker Associates, presented an update on what the Offsets Work Group has been working on (see attached PowerPoint presentation). Mr. Ceppos stated that the offsets draft document and presentation would be made available on the project website (see **Action Item 6**) and a doodle poll would be sent out soliciting availability for a subsequent Offsets Work Group meeting (see **Action Item 7**). The Stakeholder Group members had the following comments on the Offsets Work Group report.

CCP Question: How does this offsets discussion relate to the exposure reduction program?

Mr. McCord Response: This TMDL is meant to address MeHg, so if an exposure reduction program project is not addressing loads of MeHg it would not get credit under this offsets program.

Staff Question: How should the Regional Water Board incentivize risk reduction funding?

Mr. McCord Response: The funding could still provide resources to do risk reduction but it would not count as an offset project.

Stakeholder Comment: In terms of the crediting, how would the Offsets Program measure performance? Performance should be linked to an ecological outcome.

Mr. McCord Response: There is some text in the offsets principles document that deals with performance.

New Business / Next Steps

Mr. Ceppos reviewed the following next steps:

- Non-point Source Work Group Meeting November 16th at Larry Walker Associates
- Follow up meetings will be scheduled for the following:
 - MOI Work Group

- Offsets Work Group
- Environmental Justice Community Work Group

Closing Comments

Stakeholder Comment: Would like to hear what all agencies involved think the Environmental Justice community participation means to them and how it should be implemented or included in their processes when dealing with affected communities. Environmental Justice Communities include tribes, low income white people in addition to people of color. This topic should be given adequate time, and occur at the beginning of the meeting.

CCP Response: CCP and Staff will craft a series of questions so dischargers have time to prepare responses to the concerns just raised. This conversation can continue at the December 3rd Stakeholder Meeting (see **Action Item 8**).

Ms. Creedon thanked the Stakeholders for their hard work, and stated that this TMDL program is involved with all communities and is not the various parts of the TMDL and the environmental Justice communities, but rather, all parts and groups are combined and equally important.

Adjourn

November 4 Delta MeHg TMDL Stakeholder Group Meeting Attendees

Andria Ventura	Clean Water Action
Betty Yee	Central Valley Regional Water Quality Control Board
Bob Schneider	Tuleyome
Bruce Houdesheldt	Northern California Water Association
Christal Love	Center For Collaborative Policy
Chunky Harrigan	People for Children's Health & Environmental Justice
Dave Ceppos	Center For Collaborative Policy
Dave Tamayo	Sacramento County Department of Water Resources
David Child	United Cambodian Families
Debbie Webster	CVCWA
Diane Fleck	U.S. Environmental Protection Agency
Erich Delmas	City of Tracy
Fraser Shilling	UC Davis
Gene Lee	U.S. Bureau of Reclamation
Genevieve Sparks	Central Valley Regional Water Quality Control Board
Greg Giannonatti	City of Roseville
Hasheem Bason	Parents 4 A Healthy Community
Hong Lin	City of Sacramento
Jacquelyn Pimental	Department of Water Resources
Janis Cooke	Central Valley Regional Water Quality Control Board
Jeff Willett	City of Stockton
Jeff Wingfield	Port of Stockton
Jim Cornelius	Sutter County RCD
Judi Quan	Delta Protection Commission
Kari Fisher	California Farm Bureau Federation
LaDonna Williams	People for Children's Health & Environmental Justice
Leah Wills	
Lysa Voight	Sacramento Regional County Sanitation District
Mike Wackman	San Joaquin County & Delta Water Quality Coalition
Nancy Moricz	Central Valley Flood Protection Board
Noel Lerner	DWR
Patrick Morris	Central Valley Regional Water Quality Control Board
Pamela Creedon	Central Valley Regional Water Quality Control Board
Paul Buttner	California Rice Commission
Robert Morrow	
Ryan Reeves	DWR
Rudy Rosen	Ducks Unlimited
Sally Liu	The Nature Conservancy
Savong Lam	United Cambodian Families
Stephen McCord	Larry Walker Associates
Steve Mindt	California State Lands Commission
Terri Gains	DWR
Terrie Mitchell	Sacramento Regional County Sanitation District
Tim Stevens	CA Dept of Fish and Game
Tom Grovhoug	Larry Walker Associates
Tony Pirondini	City of Vacaville