

ITEM: 8

SUBJECT: Basin Plan Amendments for a Mercury Control Program for the Sacramento-San Joaquin River Delta Estuary – *Testimony Hearing*

BOARD ACTION: Information Item - Public Testimony Hearing. The purpose of this hearing is to receive Central Valley Water Board member and public comments on the proposed Basin Plan amendments for the control of mercury and methylmercury in the Delta. No Board action will occur at this hearing. The adoption hearing for the Basin Plan amendments is scheduled for 31 July or 1 August 2008.

BACKGROUND: The Sacramento-San Joaquin Delta Estuary (Delta) is impaired due to elevated levels of mercury in fish tissue. In June 2006, staff submitted a total maximum daily load (TMDL) technical report and a Basin Plan amendment staff report to scientific peer reviewers and made the reports available to the public. The TMDL report discusses mercury and methylmercury from municipal and industrial wastewater, urban runoff, wetlands, open channels, agricultural return flows, and tributaries. The TMDL report also describes beneficial uses, fish tissue numeric targets, the linkage between methylmercury in water and fish tissue, and methylmercury load reductions required to meet the targets.

The June 2006 Basin Plan amendment staff report proposed a regulatory program to control mercury and methylmercury in the Delta. The staff report discussed fish tissue objectives and a strategy to reduce methylmercury and total mercury loading into the Delta. The staff report also included adding the commercial and sport fishing beneficial use to the Delta and a monitoring program to assess compliance with water quality objectives.

Staff held a Board workshop in March 2007, two public workshops, and numerous stakeholder meetings to receive comments on the June 2006 TMDL and Basin Plan amendment staff reports. Staff revised portions of the proposed Basin Plan amendment language based on written and verbal comments from the scientific peer reviewers, workshop participants, and other stakeholders. The most recent version of the TMDL report and Basin Plan amendment staff report, dated February 2008, are included with the Central Valley Water Board's April 2008 agenda package. The February 2008 reports are available at http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/delta_hg/staff_report_feb08/.

The proposed control program consists of three components: reduce or limit activities that enhance production of methylmercury, reduce the amount of total mercury available to be converted to methylmercury, and reduce methylmercury exposure to humans that eat contaminated fish. The proposed amendment includes methylmercury allocations for NPDES facilities, municipal stormwater, agricultural lands, wetlands, open channels in the Delta and Yolo Bypass, and tributaries. The amendment also includes total mercury limits and actions to designed to reduce the concentration of mercury in sediment that is entering the Delta, including improvements to the Cache Creek Settling Basin to reduce mercury loading to the Yolo Bypass.

The proposed implementation strategy is divided into Phase 1 (2009-2016) and Phase 2 (2017-2030). Phase 1 is primarily a study period for dischargers to better characterize their methylmercury discharges and develop methylmercury control measures. Phase 1 has several interim reporting requirements to

document the progress of required methylmercury characterization and control studies. During Phase 1, NPDES dischargers are required to maintain methylmercury concentrations at current levels and other sources are required to minimize increases in methylmercury. At the end of Phase 1, the Central Valley Water Board will review study results, revise methylmercury allocations as appropriate, and establish time schedules for implementing feasible and appropriate management practices to meet the methylmercury allocations. Phase 2 will require implementation of the methylmercury controls identified by the Phase 1 studies, consistent with any revisions to the Basin Plan that are adopted at the end of Phase 1.

The proposed control program includes requirements for dischargers that want to develop pilot mercury offset projects to offset their mercury and methylmercury loads. Specific offset project proposals will need to be consistent with general guidelines established in this amendment, including the requirement for proposals to undergo scientific peer review. Offset proposals will be considered by the Central Valley Water Board independently.

ISSUES:

There are many sources of mercury and methylmercury to the Delta and its tributary watersheds. Staff frequently hears that a particular discharge does not cause the impairment and therefore should not be required to implement controls. However, although each discharge by itself may not contribute substantially to the mercury impairment, the sum off all sources causes the impairment. The proposed Delta mercury control program sets methylmercury load allocations for all identified sources within the Delta and Yolo Bypass, establishes a strategy and time schedule to develop methylmercury management methods, and sets forth total mercury reductions to be implemented in the Delta and upstream water bodies.

Stakeholders have commented that wetlands should not be required to implement methylmercury management practices because wetlands are important for a healthy Delta ecosystem. Some types of wetlands are significant sources of methylmercury while others are not. Wetland acreage is projected to increase dramatically with the construction of wetland restoration projects, thus potentially exacerbating the methylmercury impairment in the Delta if the methylation potential of new wetlands is not addressed during their design and construction. The draft Basin Plan amendment requires that wetland managers conduct studies and develop methylmercury management practices. Only managed wetlands that are significant sources of methylmercury and discharge to impaired areas of the Delta would be required to implement methylmercury management practices. Increases in methylmercury have the potential to impact some of the species that the wetlands are being built to benefit. It is expected that the studies will identify design and operational features and other management practices that can be implemented so that is possible to have expanded Delta wetland ecosystems that do not cause unintended impacts within the wetlands and in waters that receive discharges from wetlands.

Mgmt. Review: _____

Legal Review: _____

24/25 April 2008
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