

April 1, 2010

Katherine Hart, Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Cc: Patrick Morris, Janis Cooke, Cynthia Gomez, Diane Fleck

Re: Exposure Reduction Program Text in the Delta Methylmercury Basin Plan Amendment

Dear Chairwoman Hart and Members of the Central Valley Regional Water Quality Control Board,

We the following submit the following test to amend the Draft Delta Methylmercury Basin Plan Amendment Chapter 7, the Environmental Evaluation and CEQA Checklist. Our changes and additions more explicitly reflect applicable California Environmental Quality Act (CEQA) language.

V. Cultural Resources

A historical resource is a resource listed in, or eligible for listing, in the California Register of Historical Resources. The California Register includes resources on the National Register of Historic Places, as well as California State Landmarks and Points of Historical Interest. Properties that meet the criteria for listing also include districts that reflect California's history and culture, or properties that represent an important period or work of an individual, or yield important historical information. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified as local historical resources are also included in the California Register (COHP, 2001).

An archeological site may be considered a historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California (PRC §5020.1(j)), or if it meets the criteria for listing on the California Register (14 CCR §4850). If an archeological site is not a historical resource, but meets the definition of a "unique archeological resource" as defined in PRC Section 21083.2, then it should be treated in accordance with the provisions of that section (COHP, 2001).

The California Office of Historic Preservation maintains an inventory called the California Historical Resources Information System (CHRIS), which includes California historical resources, places, and landmarks, and archeological sites. Information about California Indian historical sites can be accessed through Tribal Historic Preservation Officers, found throughout California, or by contacting the State Historic Preservation Officer with the Native American Heritage Commission; contact information is below. Information in the CHRIS inventory is accessed through eleven regional Information Centers. Names, contact information, and Delta counties for which each Information

Center maintains the inventory are listed below. The Information Centers may charge fees for information about particular sites in a proposed project area. Information Centers that maintain records for Delta counties include:

- An updated listing of the The State Historic Preservation Officers can obtained by the Native American Heritage Commission (<http://www.nahc.ca.gov/>)
- Northwest Information Center at Sonoma State University maintains records for Alameda, Contra Costa, Solano and Yolo County sites (www.sonoma.edu/nwic);
- North Central Information Center at California State University, Sacramento maintains records for Sacramento County sites (www.csus.edu/hist/centers/ncic); and
- Central California Information Center at California State University, Stanislaus maintains records for San Joaquin County sites (<http://www.csustan.edu/anthro/Pages/CentralCaliforniaInfoCenter.html>).

Areas or places of importance to Native Americans can be considered cultural resources and subject to consideration in the environmental review for site-specific project, even if not identified as a California Historical Resource. California Code of Regulations Title 14 Section 15064.5(a)(3) identifies criteria for determining an area or place to be significant in the “social” or “cultural annals” of California for the purposes of environmental review. Additional guidelines in identifying “traditional cultural properties” are provided by the U.S. Department of the Interior (Parker and King, 1998). A traditional cultural property is significant because of its association with the “cultural practices or beliefs of a living community that are rooted in that community’s history and are important in maintaining the continuing cultural identify of the community. Evidence of a traditional cultural property that is not listed in the National Register of Historic Places or in inventories above will be addressed by the CVRWB and/or the lead agency that performs the CEQA process on each individual project.

Compliance with the proposed Basin Plan amendments will entail a variety of construction activities to implement total mercury and methylmercury controls and management practices. To identify cultural resources, specific project sites must also be identified. However, because precise locations for projects are not known, as noted at the beginning of Section 7.2, each project must comply with the CEQA process including tribal consultation.-Public Resources Code Section 21159 places the responsibility for project-level analysis on the entities that will implement site-specific actions to comply with the proposed Basin Plan amendments. The resources described above will help proponents of site-specific projects to identify cultural resources in a specific project area.

Even though specific projects sites are not yet identified, no significant adverse impacts to known cultural resources – historical resources, sites of archeological or paleontological significance, traditional cultural properties, or human burial sites – are expected as part of Phase 1 or Phase 2 of the proposed Project because construction activities are already required to adhere to CEQA and local ordinances to evaluate potential project sites for cultural resources through a search of historical records and databases (such as those described in the previous paragraphs) and published literature and to avoid substantial change or damage to identified resources. If potential impacts are identified, mitigation measures could include project redesign, such as the relocation of facilities outside the boundaries of archeological or historical sites. When avoidance is infeasible, by the entity completing

the project activities will follow Native American Heritage Commission's mandate for Native American Human Burials and Skeletal Remains, in partnership with affected tribe(s) which adequately provides for recovering scientifically consequential information from the site and deposits reports resulting from excavations with the California Historical Resources Regional Information Center (COHP, 2001). No impact is anticipated after mitigation.

It is possible that construction activities that involve excavation or other ground disturbances where disturbances have not previously occurred could uncover previously undiscovered cultural resources. However, it is expected that this would result in less-than-significant impacts because there are standard measures that could be implemented as part of the projects' designs to avoid or minimize impacts to newly discovered resources, many of which are required by AB 2641 (Protection for Native American Burials) and local policies and ordinances. Possible measures include:

- Require a professional trained to identify evidence of cultural resources to observe major excavation and earth-moving activities.
- If any archaeological, paleontological, or historical resources are discovered during construction activities, construction should stop within a 100-foot radius of the site, and a qualified archaeologist should be brought on site within 24 hours. If the find is determined to be significant, a full archaeological survey takes place. Construction activities in the area resumes once the survey is completed and all cultural resources are recovered.
- If any human remains are discovered during construction activities, no further excavation or other site disturbance takes place. The local coroner is notified and makes a determination as to whether the remains are of Native American origin, or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the coroner notifies the Native American Heritage Commission (NAHC) within 24 hours, the NAHC immediately notifies those persons believed to be the most likely descendant(s) (MLD) of the deceased, and once the NAHC identifies the most likely descendants, the descendants, with the permission of the landowner, inspects the site of the discovery make recommendation for the treatment or disposition of the remains and any associated grave items within 48 hours (per AB2641) of the MLD being granted access to the site. The landowner shall ensure that the immediate vicinity of the remains, established according to standard professional practices, is not damaged or disturbed by further activity until the landowner has conferred with the MLD. Discussion and consultation between the landowner and MLD should take into account the possibility of multiple burials and reasonable options regarding the MLD's preferences for treatment. If the NAHC is unable to identify an MLD, if the MLD fails to make a recommendation, or if the NAHC is unable to mediate a dispute concerning the appropriate disposition of the, the landowner shall re-inter the human remains and any associated items with appropriate dignity on the property in a location not subject to further subsurface disturbance, and to protect the remains from disturbance, the landowner must record the site with the NAHC or the appropriate Information Center, use an open space or conservation zoning designation or easement, and/or record a document with the county in which the property is located.

One possible type of traditional cultural property is a "riverscape", or river and its associated features, including water, wildlife, fish, and topography, that has significant cultural value (Gates, 2003). Waterways within the legal Delta boundary have not been formally identified as traditional cultural riverscapes. The intent of the proposed Basin Plan amendments is to reduce levels of mercury in fish

so that individuals can safely eat more Delta fish, including native fish species that may have been traditional resources from these rivers.

Thank you for your attention to this revised text. We look forward to working with the Board in future to ensure that while planning and implementing Exposure Reduction Strategies required in this BPA California Tribes will be consulted with according to federal and state mandates, and as afforded in CEQA.

Sincerely,

Corrina Gould, Chochenyo Ohlone for
Indian People Organizing for Change
cgould65@juno.com

Irenia Quitiquit,
Environmental Director
Scotts Valley Band of Pomo Indians
iquitiquit@svpomo.org

Meyo Marrufo
Environmental Director
Robinson Rancheria of Pomo Indians
mmarrufo@robinsonrancheria.org

Sherri Norris
Executive Director
California Indian Environmental Alliance
sherri@cieaweb.org

Andria Ventura
Program Manager
Clean Water Action
aventura@cleanwater.org