

**Staff's Proposed Modifications to the Draft Basin Plan Amendment**  
(February 2008 public review copy)

The following is a list of preliminary modifications to the draft Basin Plan amendment that was released to the public in February 2008. This list is by no means complete and is subject to modification and additions that may result from discussions at the stakeholder meetings.

1. Water goal: Staff recommends removing references in the Basin Plan Amendment to the 0.06 ng/l methylmercury concentration as the goal for ambient Delta waters. The linkage between methylmercury in water and fish, the use of 0.06 ng/l methylmercury as a basis for load and waste load allocations, and the use of 0.06 ng/ methylmercury for prioritizing which sources will have implementation requirements (e.g., methylmercury studies) will remain in the Basin Plan amendment staff report.
2. Phased approach: Staff recommends adding language to the Basin Plan amendment that explicitly states that:
  - o Dischargers do not have to begin implementation of methylmercury management practices, developed in Phase 1, until the Regional Water Board has reevaluated the allocations and the costs, environmental impacts, and efficacy of methylmercury management practices at the end of Phase 1.
  - o During Phase 1, the Regional Water Board will develop mercury control programs for major tributaries to the Delta. Implementation of Phase 2 control actions for the Delta will not begin until the Regional Water Board has developed the tributary control programs.

As a backstop, the allocation compliance date of 2030 will remain in the Basin Plan amendment to ensure methylmercury studies are completed. The Regional Water Board could consider amending the date at the end of Phase 1.

3. Watershed approach: Staff is now proposing that the Board and stakeholders consider a modified strategy to address the various methylmercury sources. The February 2008 strategy required that a majority of the point and nonpoint sources in the Delta and some upstream point sources conduct the methylmercury studies. The proposed modified strategy is based on recent data and a more-detailed review of estimated source loads to each of the seven Delta subareas, and focuses methylmercury studies on the largest sources within and upstream of each subarea. This proposed strategy would:
  - o Reduce the number of NPDES facilities conducting Phase 1 methylmercury studies;
  - o Reduce the number of landowners and managers for agricultural and wetland areas within the Delta required to participate in studies;
  - o Implement studies for high priority upstream sources as part of the Delta program rather than wait for the development of upstream TMDLs. This

approach would involve additional upstream methylmercury sources (e.g., irrigated agriculture and wetlands) taking part in the methylmercury studies.

4. State responsibility for open waters: Staff is proposing that the State Lands Commission, in coordination with the Regional Water Board, conduct studies and evaluate options to reduce inorganic mercury loads and concentrations and reduce methylmercury production in open waters under jurisdiction of the State Lands Commission.
5. NPDES methylmercury limits: The February 2008 Basin Plan amendment included numeric methylmercury concentration limits for NPDES dischargers for Phase 1. Staff will work with USEPA to determine if either narrative or numeric methylmercury interim limits for Phase 1 are allowable and then work with the stakeholders. The final waste load allocations must be numeric.
6. Regional Monitoring Program (RMP): An RMP for the Delta is now under development. Staff recommends that methylmercury and total mercury be included as a constituent in the RMP rather than require all NPDES dischargers in the Delta to monitor their receiving waters for methylmercury and total mercury.
7. Modified requirements for dredging and dredge material disposal projects: Staff proposes that entities responsible for dredging projects have requirements similar to the phased study approach, rather than being required to implement methylmercury management practices during Phase 1. During Phase 1, responsible parties for dredging activities would be required to evaluate management practices to reduce methylmercury and inorganic mercury discharges and to implement feasible management practices during Phase 2.
8. Exemptions: Based on suggestions from DWR flood control and water management staff, Board staff proposes exemptions for certain activities or projects that are either *de minimus* in terms of methylmercury or inorganic mercury production, projects conducted primarily for public safety reasons, or uncontrolled events:
  - Wetland creation or restoration projects less than 5 acres.
  - Projects for critical habitat restoration areas where monitoring demonstrates water and /or fish methylmercury levels are not impaired and CEQA environmental impact evaluations indicate there is little potential for methylmercury impacts.
  - Existing unmanaged wetlands.
  - Flood control projects in response to declared emergencies.
  - Emergency flood control projects, such as when the Governor declares an applicable state of emergency, or there is immediate or threatened failure of a levee.
  - Critical levee repairs if agencies take reasonable and appropriate measures to minimize mercury and methylmercury releases.
  - Flooded areas affected by failed levees that are not repaired.

- Dry-side levee work.
  - Coring and test pits on levees or other areas in floodplains.
  - Ordinary levee maintenance activities (i.e., vegetation management or levee erosion protection).
  - Levee improvement projects less than 5 acres where the earthwork is completed in the dry season and the site is stabilized from erosion prior to the wet season.
  - Changes in floodplain management that result in less than an overall 5% increase in inundation area or frequency during Phase 1. This exemption will be re-evaluated at the end of Phase 1 to assess the potential for cumulative impacts to methylmercury accumulation in Delta fish.
  - Projects where compliance with the Dredging and Dredge Material Reuse requirements would affect levee stability.
  - Dredging projects where less than 5 acres are disturbed.
  - Dredge material reuse projects less than 5 acres where earthwork is completed in the dry season and the site is stabilized from erosion prior to the next wet season.
9. Comprehensive study plans: If project proponents propose and conduct a comprehensive plan to evaluate management practices to minimize mercury and methylmercury discharges from similar types of projects, the Executive Officer will consider granting exemptions for those projects that are part of the larger comprehensive characterization and control study plan.
10. Cache Creek Settling Basin improvements: Staff recommends providing more time and adding a more detailed schedule in the Basin Plan amendment for DWR and U.S. Army Corps of Engineers (USACE) to develop a coordinated plan and funding schedule to implement improvements to the Cache Creek Settling Basin by 2018, to include USACE beginning the planning process in 2014, and to include working with affected landowners and local communities.
11. Nonpoint source reduction projects: Staff advocates encouraging and supporting watershed stakeholder efforts to identify and implement nonpoint mercury and methylmercury source reduction projects in the Delta and tributary watersheds. Language could be included in the Basin Plan amendment that states that the Regional Water Board supports local or watershed projects that implement portions of the Delta mercury program and considers such projects a high priority. There could be a recommendation that agencies that administer water quality related grants should consider and give high priority to projects that implement mercury and/or methylmercury reduction projects.
12. Increase frequency of Board updates: Staff proposes editing the Basin Plan amendment language to provide annual Region Board updates on the progress of Phase 1 activities.