

Appendix F

**Transcript
of June 14, 2006
Testimony Hearing
before the
Water Board**

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1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 OAKLAND, CALIFORNIA
3
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7 **EXCERPT OF PROCEEDINGS**
8

9 **ITEM 10:**

10 Proposed Amendment to the Water Quality Control Plan
11 (Basin Plan) for the San Francisco Bay Region to
12 Establish New Water Quality Objectives and a Revised
13 Total Maximum Daily Load (TMDL) and Implementation Plan
14 for Mercury in San Francisco Bay
15

16 JUNE 14, 2006
17

18 LOCATION:

19 1515 CLAY STREET, SUITE 1400
20 OAKLAND, CALIFORNIA
21

22
23
24 Transcription By:
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1 CHAIRMAN MULLER: Okay, first call here. We have to
2 wait just a couple of minutes until our leadership is
3 back here. We have a -- okay, we have quite a number
4 of cards, so we'll get started.
5

6
7 I just want to -- and all of you are veteran presenters
8 here, so you know what's going on. Just try to keep it
9 as brief as possible; keep the information -- if
10 there's some new and exciting, you can specifically let
11 us know on that. Otherwise, we'll go ahead and --
12 Dyan, are we ready, or no? Okay, so we're not ready.
13 That's all right.
14
15

16
17 Well, maybe at the beginning we can disclose if we have
18 any ex parte communications at this time? Is that
19 correct, Yuri? How would you like us to handle it?
20
21

22 MS. WON: That would be good. And just to clarify, in a
23 rulemaking context such as this, ex parte
24 communications are not prohibited. That said, that
25

1 doesn't mean the Board has to have these
2 communications, but if the Board chooses to have these
3 communications, the rules require that the
4 communication be disclosed on the record; with whom the
5 communication occurred and approximately when. Sorry.

7
8
9 CHAIRMAN MULLER: That's not your problem, it's the
10 system's problem.

11
12 MS. WON: Anyway, going on. In addition to that we also
13 have to allow the public to comment on those
14 communications. And the reasons are twofold. Number
15 one, we want to make sure the Board's decision is based
16 on the record. And number two, we want to ensure a
17 fair and transparent process.
18
19

20
21 So with that, if the Board members had any ex parte
22 communications they've had, it would be good for them
23 to disclose them now and give the public an opportunity
24 to respond.
25

1 MR. ELIAHU: Mr. Chair, I had that summary letter from
2 Baykeeper, and were asked to meet to discuss the issue
3 of TMDL, Mercury TMDL. And I declined to meet.
4

5
6 CHAIRMAN MULLER: Okay.
7

8
9 MS. BRUCE: Yeah, Baykeeper sent me an e-mail
10 transmission, and unfortunately, just due to my
11 schedule I was not able to reply or to read their
12 attachment. But just wanted to disclose that that
13 communication had been made. And while I appreciate
14 their outreach, my schedule prohibited a suitable
15 response.
16

17
18 MR. WOLFF: And I did meet with Baykeeper and with Clean
19 Water Action, and went over the tentative -- whatever
20 we're calling it, draft TMDL revision. And they raised,
21 I think, five or six points on it; all of which are
22 contained in their formal comment letter. So the
23
24
25

1 substance of the conversation was about their comment
2 letter.

3
4
5 I do have a question for legal counsel. I just want to
6 be clear. Did you tell any Board member that they
7 could not, or should not as a legal matter, meet with
8 Baykeeper?
9

10
11 MS. WON: No, I did not.

12
13
14 MR. WOLFF: Okay, thank you.

15
16 MR. ELIAHU: Well, I spoke with Yuri. And she told me,
17 no, I can meet. Just declare that I had the meeting.
18 But I decided not to meet.
19

20
21 CHAIRMAN MULLER: And it was recommended to me not to
22 meet. It was my decision, but I believe the wording
23 was -- they encouraged us, I think. Right, Bruce?
24 They encouraged us not to at that time?
25

1 MR. WOLFE: Well, my --

2
3
4 CHAIRMAN MULLER: And this was sometime back, and I'm
5 not sure exactly on dates.

6
7 MR. WOLFE: Right. And as we say, the idea on these
8 types of items is that we can meet, but have to
9 disclose that. I think in talking with you, a couple
10 of you in the last couple of weeks, I said this is on
11 the June Board meeting. I'd suggest that you hear
12 what's presented at the June Board meeting, and then
13 determine whether you want to meet.
14
15

16
17 MR. WOLFF: So, I'm sorry, just to clarify.

18
19
20 CHAIRMAN MULLER: Go ahead.

21
22 MR. WOLFF: So your recommendation to a couple of Board
23 members was that they not meet prior to this meeting,
24 but then -- or meet subsequent to the meeting?
25

1 MR. WOLFE: Well, that this is the material we are going
2 to hear today. Hear everything today and then meet to
3 further clarify.
4

5
6 MR. WOLFF: I understand. I'm just trying to find out
7 how the communication occurred, because there seems to
8 be a belief that, you know, people were told they
9 couldn't meet. That's apparently incorrect.
10

11
12 MR. WOLFE: No, and that's something --
13

14
15 MR. WOLFF: But something different did take place,
16 which was a recommendation maybe to delay meeting until
17 after the hearing.
18

19
20 MR. WOLFE: Yeah.
21

22 MR. WOLFF: That seems to be what took place. Okay.
23
24
25

1 MR. WOLFE: I'd also, as part of this discussion, since
2 many of the comments seem to be focused on an e-mail
3 which the Board member received in response, knowing
4 that this e-mail had come out -- one of the items in
5 the e-mail is indeed a letter that Baykeeper had
6 submitted to us during the public comment period, which
7 is -- was dutifully done in the public comment period,
8 including the package. One item they included in the
9 e-mail was a one-page summary that was not part of the
10 letter submitted to us.
11
12

13
14
15 So as part of that, we made copies of that for
16 everybody. And it is a one-pager that we've put out on
17 the table out front. And that's available now to
18 everybody, should they want to see it.
19
20

21 CHAIRMAN MULLER: Along that line -- Clifford, go ahead.
22

23
24 MR. WALDECK: I was just going to -- the Mercury TMDL is
25 probably one of the most important things that we'll

1 ever do. And when we went through it the last time, we
2 got blindsided on so many fronts that I just wanted to
3 make sure, going forward on this second round, that I
4 just wanted to get some more information going into
5 this here. Because there's a very -- it was a
6 difficult hearing the last time, it was difficult being
7 publicly chastised by EPA. And it got send to the
8 State Board, it got remanded back to us.

11
12 I think the Staff did a fantastic job the time
13 beforehand, but the remand did occur. And so I took
14 very to heart my responsibility of moving forward; that
15 since Baykeeper and NRDC had said, 'we submitted these
16 comments in, we wanted to go over them with you,' that
17 I met with Baykeeper and NRDC to discuss these things.

19
20
21 I memorialized those comments as well as condoms -- I
22 mean, condoms -- comments from people that I'd ran into
23 around Mill Valley as well, into an e-mail to Staff.
24 And when I got a call from Kevin Buchan of WSPA, I had
25

1 a conversation with him as well. And I shared in the
2 comments that I shared with Staff, and so that's -- so
3 I kind of wanted to have full disclosure of some of the
4 homework I'd done before the meeting. Because I really
5 want us to get this right, and I want to -- and so
6 that's why, you know, I had these ex parte
7 communications. And I hope it helped move the process
8 forward here.
9
10
11

12 MS. WON: Thank you, Mr. Waldeck. But can you specify
13 what you talked about, so that persons can respond?
14
15

16 MR. WALDECK: I talked about what was outlined in the
17 Baykeeper letter that was sent in to Staff. That is
18 part of their report here. And with Kevin Buchan of
19 WSPA, I talked about what those concerns were that were
20 in the -- you know, I told Kevin that I spoke with the
21 Baykeeper and the NRDC folks, as to these are some of
22 the concerns that, you know, that had been voiced by
23 them.
24
25

1 Because when things just show up directly at the
2 meeting, there's no time for people to react. And when
3 I chaired the meeting when EPA chastised us for our
4 Mercury TMDL the last time, this is when I knew that
5 when this hearing came up again that, you know, extra
6 homework had to be done as a Board member here. And
7 that's why I am grateful that these people took the
8 time to sit down with me to explain things, and where
9 they were at there. And that's true with Baykeeper and
10 with NRDC and with WSPA.

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15 CHAIRMAN MULLER: Okay. Kristina, anybody else?

16
17 MS. BROUHARD: Just the same, I got an e-mail from
18 Baykeeper. And I believe it was made available for the
19 summary.
20

21
22 CHAIRMAN MULLER: Ms. Deluca?
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1 MS. DELUCA: I did not receive a letter, and I honestly
2 have no recollection of the e-mail. In any case, I did
3 not respond.
4

5
6 CHAIRMAN MULLER: Along that line with the e-mail world
7 of technology, I tried to open it and I goofed it up,
8 or something happened. So what's the call on that? If
9 we have it in the computer and were not able to
10 retrieve it, would you give us a little clarification
11 quickly?
12

13
14
15 MS. WON: If you did not read the substance of the e-
16 mail, it's -- you know, it's not tested at this time
17 communication that you necessarily had, because you'd
18 didn't get anything substantive from the e-mail.
19

20
21 CHAIRMAN MULLER: So if we go to court, we can just send
22 our wife.
23

24
25 MS. WON: Sure.

1 CHAIRMAN MULLER: Her fault. No, it was my fault; I
2 apologize. I was planning on meeting, to be honest
3 with you, with Baykeeper at one point. But it was time
4 commitments in planting, and travel with Baykeepers and
5 things like that. So I did not have a communication.
6

7
8 Okay, so I think we're all up to speed here now. Did
9 we give the public a chance to comment, if anyone wants
10 to comment?
11

12
13 MR. WOLFE: Yeah, I think that's -- that closes, or that
14 gives us the opportunity to close the loop. Because, as
15 everybody's noted, this is significant that the Board
16 did take action on this item in September 2004. And it
17 was remanded by State Board. We are proposing to
18 address the components of that remand. We recognize
19 the process issues here, that all comments we must
20 respond to. So we want to definitely get all comments
21 out on the table so we can respond, and ideally make
22 sure that this time around this is something that we
23
24
25

1 can all support and take to the State Board and EPA,
2 and ideally get on with the implementation of it.
3

4
5 With that, I'd -- we've got another tag-team
6 presentation here, so Tom is going to lead off and then
7 Carrie Austin will join him.
8

9
10 CHAIRMAN MULLER: So, excuse me. So we have no one from
11 the public that's going to comment on this at this
12 point?
13

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15 MR. WOLFE: No. After our presentation --
16

17 CHAIRMAN MULLER: Oh, they still can.
18

19
20 MR. WOLFE: Then in terms of commenting on ex parte
21 communications, I'd recommend that any public who wants
22 to comment on that, include that in their comments to
23 you.
24

1 CHAIRMAN MULLER: Okay, understand. And also, there
2 will be no action taken today, is that correct?
3

4
5 MR. WOLFE: Correct. This is purely to --
6

7 CHAIRMAN MULLER: This is strictly information.
8

9
10 MR. WOLFE: -- get all comments in, and then we'll need
11 to respond. We'll give the initial flavor of our
12 response.
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15 CHAIRMAN MULLER: Great. Thank you, Tom, for your
16 patience.
17

18
19 MR. MUMLEY: Oh, certainly. For the record, I am Tom
20 Mumley, and I head the Planning and TMDL Division here
21 at the Board. And I'm pleased to have this opportunity
22 to make this presentation to you, Board. And I'm
23 particularly pleased to see Board Member Deluca. I've
24 missed you, and welcome back. We all, as Staff,
25

1 appreciated your wise and key input to our items. So,
2 thank you for being here and listening to us again.

3
4 No, you were here before.

5
6 Before I start, though, Carrie Austin, who has been the
7 Staff Lead on preparing this item, will get some
8 recognition by coming up here. I wanted to just
9 recognize that I'm only the leader of the pack. The
10 work has really been done by a key team of people,
11 including Dyan Whyte, Janet Cox, Richard Looker and I
12 can't ignore Bill Johnson, who's no longer in our team.
13 But he put a lot of heart and soul into our efforts
14 earlier, and we still are benefiting from the efforts
15 of Khalil Abu-Saba put into the foundation of this when
16 -- you know, going back and -- actually, I just
17 noticed, Khalil's actually here. So, thank you all,
18 team. You're all part of what we're going to present
19 here.
20
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1 So what we're going to present to you today is
2 background, pretty much why we are here. And then
3 Carrie's going to give you -- I'll give you that.
4 Carrie's going to give you an overview of the Basin
5 Plan Amendment, the new Water Quality Objectives and
6 the specific revisions to the TMDL and Implementation
7 Plan we're proposing. And then I'll wrap up with a
8 brief overview, summary of comments received and
9 initial reflections on a couple of those comments.
10
11

12
13 To start it off, I think the first thing, though, we
14 have to just reflect on what this is all about. And
15 this is all about the fact that due to high levels of
16 mercury in fish in the Bay and other organisms, the Bay
17 doesn't fully support its beneficial uses. There is a
18 consumption advisory on fish in the Bay, about
19 consuming fish by humans in the Bay. There are
20 concerns with bird egg hatch failures due to excessive
21 mercury, and unfortunately one of the birds that's
22 affected by this is a rare and endangered species, the
23
24
25

1 least tern. So there's truly reason to be concerned
2 about mercury in the Bay.
3

4
5 And this next graph just sort of illustrates the issue
6 regarding consumption of fish by humans. The red
7 circles reflect the median concentrations measured in
8 the most commonly consumed fish from the Bay. And
9 also, the green line is reflecting of the target, the
10 level that we were proposing to be considered to be
11 safe for consumption of fish, on average as .2 parts
12 per million. So levels of fish in the Bay, in terms of
13 parts per million in these various fish.
14
15

16
17 The striped bass, unfortunately, which is commonly
18 consumed, shows the highest. And if you will, this is
19 our poster fish for this effort. Because this got our
20 attention early on, and we designed the TMDL to bring
21 this circle down to this line. So that's sort of --
22 that's the bottom line, if you will.
23
24
25

1 So to provide some historical perspective on why we're
2 here, first, I just want to remind you this Board acted
3 in September of 2004 to establish a -- approving a
4 Basin Plan Amendment establishes a TMDL and
5 Implementation Plan to address mercury concern. And we
6 consider that effort, that action resulted in a
7 comprehensive approach to solve what is indeed a
8 complex problem.
9
10

11
12 In fact, we had the first hearing leading towards that
13 action in September 2004 and June of 2004. So two
14 years ago, we were before you presenting the first
15 hearing for that action.
16
17

18 Subsequent to that action, after a series of three
19 public hearings, which Chairman Muller is directly
20 familiar with because he was present, the State Board
21 voted in September of 2005 to remand the Basin Plan
22 Amendment back to this Board for further consideration
23
24
25

1 rather than approving it. And I'll give you a brief
2 overview of what the remand issues are.
3
4

5 We then prepared a proposed approach to respond to the
6 remand that we presented to you in November 2005, and
7 our approach was designed to be responsive in an
8 efficient and timely manner to the remand order; while
9 at the same time minimizing expenditures that would
10 distract from implementing the measures that we deemed
11 necessary to really solve the mercury problem.
12
13
14

15 And then subsequent to the November workshop that we
16 had with you, we had a public workshop in January in
17 this room, where we presented our approach to the
18 public at what's called a CEQA scoping meeting to
19 solicit input on the scope of this effort.
20
21

22 So a brief overview of what the remand called for, it's
23 summarized in a series of points. One, there were
24 concerns raised as to whether the waste load
25

1 allocations established by this TMDL reflect the best
2 pollution prevention and treatment controls available.

3
4 There was also a call to require methyl mercury
5 monitoring in NPDES permits. It also called for
6 clarifying that the TMDL Implementation Plan is
7 consistent with our long-term management strategy for
8 managing dredge material disposal in the Bay. It also
9 called for an inventory and setting of priorities for
10 addressing legacy sources. By legacy sources, we mean
11 abandoned mines and hot spots in the Bay.
12

13
14
15 There were questions regarding clarifying and revising
16 the wildlife target as previously proposed. And this
17 was -- this last issue was the big issue that was
18 already alluded to by Board Member Waldeck, is that EPA
19 had expressed explicit concerns that it would not be
20 able to approve the TMDL because it determined that it
21 wouldn't implement what was recognized as an outdated
22 but still applicable water quality objective.
23
24
25

1 So we debated that it would, they asserted it wouldn't.
2 We are now -- the remand told us to fix this. And I'm
3 glad to say, we have.
4

5
6 So the bottom line is, consistent with the approach
7 that we presented to you in November, we prepared a
8 Basin Plan Amendment that establishes new Water Quality
9 Objectives to resolve the targets and objectives
10 issues, and made other proposed revisions to the
11 previously adopted TMDL and Implementation Plan.
12
13

14
15 And I guess I also want to emphasize that there are
16 other actions that we are implementing in response to
17 the remand that are not reflected in what was public
18 noticed for consideration by the public. I want to
19 specifically say that in February we public noticed the
20 proposed Basin Plan Amendment changes, and solicited
21 the limited comments to these changes. And those
22 changes are, specifically, the new Water Quality
23
24
25

1 Objectives and some revisions to the TMDL and
2 Implementation Plan.

3
4
5 Carrie Austin is going to give you an overview of what
6 those changes are.

7
8
9 CHAIRMAN MULLER: Thank you, Tom.

10
11 MS. AUSTIN: Good morning, Chairman Muller and Members
12 of the Board. I'm Carrie Austin, an Engineer working
13 on Mercury. Prior to coming to the Water Board, I felt
14 obligated to fulfill what I saw as my civic
15 responsibilities as serving on local community boards.
16 So it's very unusual for me to be on this side of the
17 podium. I'm much more used to being up there, and
18 considering Robert's Rules of Order and other things.

19
20
21
22 So this is my first time to make a presentation as
23 Staff, and just my luck to have it be the San Francisco
24

1 Bay Mercury TMDL. So this morning I'm going to present
2 our key responses to the remand.
3

4
5 EPA's prime concern was with our Water Quality
6 Objectives. This is true not only for the San Francisco
7 Bay Mercury TMDL but for several of the other TMDLs.

8 To resolve this concern, we have new fish tissue Water
9 Quality Objectives proposed to you for San Francisco
10 Bay, and in the future we will establish new fish
11 tissue mercury objectives with each Mercury TMDL. We
12 propose a few changes to the TMDL and Implementation
13 Plan that you approved in 2004.
14
15

16
17 Lastly, there are a couple of actions being taken
18 outside the basin planning process itself. So here on
19 the right you can see the three Water Quality
20 Objectives that apply in San Francisco Bay. The first
21 two, the 4-day and the one-hour average objectives are
22 in our Basin Plan. And the third one is applicable to
23 south of Dumbarton, just in the South Bay.
24
25

1 This is what we plan. We plan to change, that is, to
2 vacate the 4-day average number for this and other
3 Mercury TMDLs. This objective is outdated. It's based
4 on 20-year-old science, which prescribed an objective
5 for the water column based on one part per million
6 mercury in fish, which is too high. It's not
7 protective.
8
9

10
11 We propose to replace the 4-day average objective with
12 two separate fish tissue Water Quality Objectives to
13 protect human health and aquatic organisms and
14 wildlife. Here's a simple diagram of mercury
15 bioaccumulation from prey fish. Let's see -- I don't
16 get a pointer up here with this mouse. Oh, there it is
17 -- from prey fish, and you can see that goes up into
18 birds and their eggs. And also from prey fish up into
19 the large predator fish and then into humans.
20
21

22
23 We are proposing new Water Quality Objectives for San
24 Francisco Bay, shown here in the bold text. We
25

1 recommend these objectives in fish tissue because it
2 best represents the risk for mercury, and because it is
3 directly measurable in fish. The TMDL you previously
4 adopted will attain these objectives. In other words,
5 there are no additional implementation actions required
6 to attain these objectives.
7
8
9

10 Starting at the top with predator fish, we relied on
11 the U.S. EPA methodology to calculate the objective to
12 protect human health. Their national default number is
13 .03 part per million in larger fish which humans
14 consume. EPA recommends adjusting this for local fish
15 consumption, which results in our proposed objective,
16 as you can see here on this slide, of .02 part per
17 million mercury. That's actually a striped bass.
18
19

20
21 Moving down to prey fish, similar to protecting human
22 health, to protect wildlife we relied on the U.S. Fish
23 and Wildlife Service methodology for wildlife, which
24 results in our proposed objective of .03 part per
25

1 million mercury and prey fish. Now let's see how these
2 objectives are used in the TMDL.
3

4
5 In fact, the TMDL was already consistent with Water
6 Quality Objectives. However, we have slightly modified
7 the TMDL Water Quality Targets for clarity and for
8 consistency with the new wildlife objective.
9

10 Modifications are shown in yellow text here. The human
11 health target is clarified. It will be measured in
12 medium length striped bass, a commonly consumed Bay
13 fish which is prized by anglers.
14

15
16 Our target for prey fish is calculated to protect
17 wildlife. The prey fish target offers the same amount
18 of protection as the bird egg target of less than a
19 half a part per million mercury.
20

21
22 In this revision we have made the prey fish target the
23 official target in the TMDL. But we have retained the
24 bird egg target as a monitoring target. The sediment
25

1 target is unchanged. We used it to set allocations
2 from which we determined we needed overall about a 40
3 percent reduction of mercury. But I'm getting ahead of
4 myself. Let's talk about sources and take a look at
5 those first.
6

7
8 So here's a chart that shows our sources and our loads.
9 So our source categories are the text, and the brown
10 bars on the graphs are the loads. So starting the left
11 here with bed erosion, that is what we estimate to be
12 our biggest load of mercury in San Francisco Bay.
13
14

15
16 So bed erosion is erosion of the Bay floor, and the
17 buried layers of sediment from long ago. Mercury
18 deposit in the Bay during historic mining activities is
19 now being either eroded and moved up into the water
20 column and eventually out of the Bay, or it is being
21 covered by cleaner sediment.
22
23
24
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1 The Central Valley watershed still discharges large
2 quantities of mercury to the Bay from legacy mine
3 sources. Urban runoff appears to carry substantial
4 quantities of mercury to San Francisco Bay. Some of
5 this load is from atmospheric deposition to the land
6 surface, which is later transported in storm water to
7 the Bay, and from residential, commercial and
8 industrial sources such as broken fluorescent light
9 bulbs.
10
11

12
13 The Guadalupe River watershed in San Jose, which
14 includes the historic New Almaden mercury mine,
15 continues to discharge large quantities of mercury from
16 legacy mine sources. Atmospheric deposition, road
17 runoff and waste water together account for about five
18 percent of the load. Dredging and disposal operations
19 represent a net mercury loss. So I don't show loads,
20 and the allocation is zero.
21
22
23
24
25

1 The source categories have not changed. These are the
2 same source categories for which you established load
3 allocations when you adopted this TMDL in 2004. We
4 propose two minor changes to the load calculations.
5 Our minor changes to the load calculations are shown in
6 the inset in the upper right.
7

8
9
10 First, we corrected the waste water load from 20 to 18
11 kilograms per year. That's from the brown down to the
12 orange bars. And second, we have rounded all loads and
13 allocations to two significant figures. We also have a
14 revised allocation for waste water called out in bright
15 green. But first, let me run through the allocations
16 beginning on the left with bed erosion. On the main
17 figure on this graph, the loads are shown in brown and
18 the allocations in green. So let's look at those green
19 bars.
20
21

22
23
24 The allocation to Central Valley is to attain the .2
25 part per million sediment target, which Central Valley

1 sediment concentrations are fairly close to attaining.
2 Therefore, their allocation is a bit larger than the
3 allocation to bed erosion. Urban runoff is expected to
4 achieve about a 50 percent reduction. The allocation
5 to the Guadalupe River watershed, like the allocation
6 to the Central Valley, is to attain the .2 part per
7 million sediment target.
8
9

10
11 The allocation to atmospheric deposition and rural
12 runoff are their current loads. We have a revised
13 allocation for waste water, which I'll go into in more
14 detail in a minute. But first, let me remind you that
15 it's the sum of the allocations. Actually, the TMDL
16 you previously approved of 705 kilograms per year,
17 which is the key to attaining water quality standards.
18 That is, San Francisco Bay safe and fishable for humans
19 and wildlife.
20
21

22
23 But, really, it's waste water that was the focus of the
24 remand. As you can see on the chart inset on the upper
25

1 right, from the green to the bright green bars, we
2 propose about a 33 percent reduction in this load from
3 18 down to 12 kilograms per year. Let me explain how
4 we revised the waste load allocation.
5

6
7 So here you can see the revised waste water allocation,
8 starting at the top. The total load is about 18
9 kilograms per year. In response to the State Board,
10 we're now proposing to reduce the waste water waste
11 load allocations by up to 40 percent. The waste water
12 category includes municipal and industrial facilities.
13
14

15
16 On the left, you can see the municipal load of 17
17 kilograms per year, which we're proposing to reduce to
18 11 kilograms per year. We looked at the municipal
19 category, and for those dischargers discharging less
20 than .1 kilogram per year, we propose no reduction.
21
22 Plants providing the greatest level of treatment are
23 called advanced treatment plants. And we propose a 20
24 percent reduction for them.
25

1 Most plants provide secondary treatment, for which we
2 propose a 40 percent reduction.
3

4
5 We anticipate that the first 20 percent reduction will
6 be obtained by additional pollution prevention
7 activities, and the second 20 percent reduction will
8 come from the forthcoming pollutant offset policy, and
9 anticipated treatment improvements over the next 20
10 years with multiple pollutant benefits.
11

12
13 The 40 percent reduction increases the margin of
14 safety, given uncertainties in the bioavailability of
15 mercury and waste water discharges. In the center and
16 the right boxes, we see that the industrial load is
17 just under a kilogram per year from the refineries and
18 just under half a kilogram per year from industry.
19
20

21
22 We do not propose a decrease in the waste load
23 allocation to industry at this time, but it's
24 contingent. It's contingent on performance evaluation
25

1 to confirm they have better than average treatment
2 plant performance. Like before, the Basin Plan
3 Amendment contains three tables of individual waste
4 load allocations for municipal, refinery and industry.
5 When summed, the individual waste load allocations
6 equal these aggregate waste load allocations I've just
7 described.
8

9
10
11 So here are our revised loads and allocations. The
12 reduction of waste water is shown in bright green. We
13 propose about a 33 percent reduction to the waste water
14 category, which brings the grand total of allocations
15 down by six kilograms to 700 kilograms per year. Next,
16 let's look at implementation and waste water in more
17 detail.
18

19
20
21 The TMDL Implementation Plan provides 20 years to
22 attain the allocations. But the Implementation Plan is
23 not merely to attain the allocations for each source
24 category. Most source categories have several action
25

1 items. So let's take a look at a few examples of
2 implementation.

3
4
5 The Central Valley Water Board has already adopted two
6 Mercury TMDLs and is in the process of developing the
7 Sacramento/San Joaquin Delta Mercury TMDL. I will turn
8 my attention back to the Guadalupe Mercury TMDL as soon
9 as I finish with the Bay Mercury TMDL.
10

11
12 Urban runoff has a comprehensive Implementation Plan.
13 The implementation plans for urban runoff and waste
14 water are similar in scope. Let's look at waste water
15 in more detail.
16

17
18 We propose to implement waste load allocations with
19 both numeric and narrative effluent limitations. The
20 numeric requirements for waste water sources include
21 individual mass limits which are equal to their
22 individual waste load allocations, and enforcement on
23 individual plants only if the aggregate mass limit is
24
25

1 exceeded. Narrative requirements for waste water
2 sources are numerous. Implement effective pollution
3 prevention, monitor methyl mercury and discharges,
4 conduct studies on local effects and (inaudible) and
5 transport do not exceed either performance-based mass,
6 and we've crossed that out -- we're making this more
7 stringent -- or concentration triggers. If so, report
8 on cause and consider remedies. Implement risk
9 reduction programs.

10
11
12
13
14 So now I'm going to talk a little bit more about risk
15 reduction. The Basin Plan Amendment includes changes
16 to solidify commitment by agencies and dischargers to
17 reduce risk. The Clean Estuary Partnership has a risk
18 reduction work team consisting of a multi-disciplinary
19 panel of experts convened to write an action strategy.

20
21
22 Some of our responses to the remand are outside of the
23 basin planning process. The State Board is taking the
24 lead on the pollutant offset policy, and that effort is
25

1 underway. Here in the Bay Region work is underway to
2 inventory and prioritize mine sites. There are eight
3 mine sites which drain to San Francisco Bay, and we
4 will bring a report to you soon on these. And we will
5 also soon be reporting to you on the Bay margin hot
6 spots.
7

8
9
10 So in summary, the remand had 13 action items. Two
11 items on this list, seven and eight, are underway
12 outside the basin planning process. The remaining 11
13 items will be completed by adoption of this TMDL. I'll
14 turn over the podium now to Dr. Mumley, who will review
15 the comment letters with you.
16

17
18 MR. MUMLEY: Thank you, Carrie. As noted in our package
19 we received, I believe, 11 comment letters from
20 multiple parties reflected here. And pardon my
21 excessive use of acronyms, which I tend to try to
22 avoid. Fortunately, I think most of these are probably
23 known. But BACWA is Bay Area Clean Water Agencies,
24
25

1 East Bay MUD is East Bay Municipal Utility District,
2 WSPA is the Western States Petroleum Association,
3 BASMAA is the Bay Area Stormwater Management Agencies
4 Association, and U.S. EPA, I forget. No, it's the
5 United States Environmental Protection Agency. And I
6 shouldn't slight U.S. EPA because I want to first call
7 attention to their comment and recognize, and if you
8 will, celebrate that their comments provide support for
9 all components of the Basin Plan Amendment,
10 specifically the new Water Quality Objectives may be
11 realized through our TMDL.

12
13
14
15
16 And in particular, Mrs. Deluca, this was the -- the
17 objectives was the issue that we are confronted with
18 that I know troubled you back in 2004. And again,
19 we're here to celebrate that that issue no longer
20 exists. And we're very encouraged by this. And we've
21 had good support by EPA in the development of these
22 objectives. So, thank you EPA.
23
24
25

1 We've got comments from dischargers that I would say
2 call it some conditional support, with some
3 reservations for the new Water Quality Objectives.
4

5 Water Quality Objectives always cause concern by
6 dischargers, and it's not surprising that some concerns
7 are being expressed. We have conditional support for
8 the revised, more stringent waste load allocation and
9 associated implementation mechanisms. The key
10 condition is that it be contingent on a pollutant
11 offset policy be established by the State Board. And
12 I'll talk to that briefly later.
13
14

15
16 The particular concerns raised by many dischargers have
17 to do more with the regulatory analysis in our package
18 that's called for by the Water Code when establishing
19 Water Quality Objectives, or otherwise to meet CEQA
20 requirements; specifically the breadth and content of
21 our economic and environmental impact analysis.
22

23 Certainly we take those comments seriously, and we'll
24 give them thorough consideration.
25

1 They also expressed some concerns regarding the
2 specifics of the risk reduction requirements, the scope
3 and how they may be required, and I'll briefly touch on
4 those again later. The Baykeeper, Clean Water Action
5 and Natural Resources Defense Council submitted one
6 letter expressing their concerns in one body. They do
7 provide some support for some key elements: the revised
8 waste water, waste load allocations, the expanded
9 pollution prevention requirements, the requirement for
10 methyl mercury monitoring, and the proposed additions
11 to the risk reduction language that we present.
12
13
14

15
16 That is countered by they do have -- they would like to
17 see additional requirements, more specific requirements
18 for individual dischargers, expressed that we don't
19 present in our package. They also expressed concern
20 about the reliance on pollutant offsets, and I'll
21 reflect on that later. But probably the most critical
22 comments from them have to do with our proposed
23 approach to implement individual waste load allocations
24
25

1 as effluent limitations, or how they will be
2 implemented as effluent limitations and their
3 enforceability. And I'll explain that in a little bit
4 more detail in a second.
5

6
7 I just want to reflect on some other comments that were
8 received from this group. They reflect issues that we
9 consider beyond the scope of the remand, particularly
10 beyond the scope of the remand in terms of having to
11 amend the Basin Plan Amendment to resolve them. These
12 involve further investigations of mercury and crude oil
13 process in the Bay, and further analysis of air
14 sources, that air source is really a subset of the
15 bullet regarding additional requirements for urban
16 runoff programs.
17
18

19
20
21 They ask us to consider revisions to existing
22 requirements and add new requirements to the urban
23 runoff section of the Implementation Plan. That is
24 truly beyond the scope of what was called out in the
25

1 remand. And I just call it to your attention for
2 context when you consider these comments. They also
3 requested that we expand existing basin planning text
4 to reflect what we're doing in terms of addressing
5 legacy sources.
6

7
8 And our initial reflection on this is all these issues
9 are being resolved through implementation actions that
10 are already underway. And changing the Basin Plan is
11 not necessarily going to change that. The best way to
12 resolve them is through our implementation of various
13 actions that will resolve these issues.
14
15

16
17 I want to reflect on concerns raised by the Baykeeper,
18 et al, regarding the waste water, waste load
19 allocations and how they would be implemented. I just
20 want to emphasize that our implementation scheme
21 reflects a combination of numeric and narrative
22 effluent limitations. And this combination is
23
24
25

1 consistent with what was established by this Board in
2 2004, but they're now more stringent.

3
4
5 And the last part here is that we do present a
6 mechanism by which the individual waste load
7 allocations would be implemented or enforced as
8 individual effluent limitations, but only when certain
9 conditions are met. And that is when the total waste
10 water allocations for the fourth category is exceeded.

11
12 And I need to emphasize the last two bullets in the
13 context.

14
15
16 First of all, this is consistent with the existing
17 regulations that state "water quality based effluent
18 limitations and NPDES permits must be consistent with
19 applicable waste load allocations." And the way we
20 crafted our implementation scheme is indeed consistent
21 with how those waste load allocations were crafted.
22
23
24
25

1 If they were to be implemented as directly enforceable
2 individual limits, they would have to be recrafted.

3 Because they were not designed to be implemented that
4 way, and we would have to take into consideration
5 numerous factors in terms of system variability. You
6 have to account for various uncertainties if you're
7 going to make an effluent limit prescriptive. The way
8 we would implement it prescriptively would be in the
9 context of the whole.
10
11

12
13 And also keep in mind that this is total mercury, not
14 methyl mercury. Methyl mercury is the form of mercury
15 that we're most concerned about, and it's the form that
16 bioaccumulates. So in addition to these explicit
17 controls on total mercury that's reflected in our waste
18 load allocation, we have other controls, albeit
19 narrative, that reflect dealing with the methyl mercury
20 aspect of things. So we have added assurance to our
21 package.
22
23
24
25

1 So maybe I'm trying to emphasize from a science
2 perspective, this approach makes sense in terms of how
3 we implement the total mercury waste load allocations
4 as effluent limitations. Because the science tells us
5 we need to deal with methyl mercury, and we're not able
6 to express methyl mercury allocations as effluent
7 limitations at this time. We need a lot of study to
8 better understand how methyl mercury is produced, and
9 its fate and effect on the Bay. And that's a
10 requirement on the dischargers to assist us with
11 evaluating that problem, in terms of whether -- not
12 only local effects but how the system as a whole is
13 behaving.
14
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17
18

19 So our narrative requirements strengthen the individual
20 accountability presented by the waste load allocations,
21 but also call for these additional studies. And I want
22 to point out the compliance trigger Carrie alluded to,
23 one of which is a mass compliance trigger that's
24 reflective of the individual waste load allocations,
25

1 but it's expressed more stringently than -- and it's a
2 subtle basis for the more stringent. But we do have
3 that built -- potentially enforcement of those
4 individual waste load allocations built in by design.
5 It's just how the enforcement plays out. Essentially,
6 we built into the implementation scheme a sort of
7 progressive enforcement scheme.
8
9

10
11 The way we've set it up is that we believe that there
12 would be immediate individual accountability by use of
13 those targets. If the target is exceeded, we want to
14 know immediately why it was exceeded and what you're
15 going to do to fix it, versus having to wait until we
16 can demonstrate that an annual limit was exceeded, and
17 then taking enforcement action as the means to resolve
18 the problem.
19
20

21
22 And we just want to emphasize that from a mass based
23 perspective, the solution to the base problem is
24 resolving the total amount of mercury, and the total
25

1 amount of mercury from all waste water sources combined
2 is less than two percent. So our design is to reduce
3 the total amount of mercury, rather than focusing
4 attention on all the -- each individual. But each
5 individual is giving attention in the context of our
6 sort of comprehensive multi-faceted scheme.
7

8
9
10 And can't help but emphasize that there is some benefit
11 to this approach, it's reflective of a discharger's
12 willingness to work with us to make this process work.

13 And it's been reflected in their willingness to put
14 money on the table to help us improve our understanding
15 of the Bay. It will help us to build more better
16 TMDLs, not only to improve the Mercury TMDL that we're
17 envisioning in the future, but also various other --
18 dealing with various other impairments to the Bay at
19 the same time.
20
21

22
23 I like to look at it as the machine that we build is a
24 complicated machine, has various dials. And we feel we
25

1 have the optimum setting for all those dials to get the
2 maximum output. If we turn down this one dial
3 regarding individual waste load allocations, I fear the
4 machine will break down and the net output will go
5 down. In other words, we feel we get the maximum
6 benefit out of the design we present. And if we don't
7 get the maximum benefit out of the design we presented,
8 we have plenty of mechanisms to fix the system, versus
9 to assume the system is broken as presented because
10 it's not as stringent as it might be.
11
12
13
14

15 I just want to reflect -- and I think you'll get
16 comments regarding asking us, asking you to require in
17 the Basin Plan that we further study mercury and crude
18 oil. I just want to call attention that we've
19 addressed the issue of mercury and crude oil in the
20 already approved Basin Plan Amendment. And that we
21 require that through an enforcement letter to identify
22 potential pathways and estimate loads associated with
23 them.
24
25

1 In a letter issued in February of 2005, we explicitly
2 called out a requirement to evaluate mercury and air
3 emissions, and a report based on that letter is due
4 next year. But I'm also pleased to say that other
5 efforts are underway, and a report addressing other
6 waste streams is also forthcoming. The point here is
7 we're working on this issue, and there's not a need to
8 change the Basin Plan Amendment to resolve the issue of
9 mercury and crude oil.
10
11

12
13 We are very confident of our efforts to date, and we
14 have this very powerful authority with your concurrence
15 to use requirement letters to make this happen.
16
17

18 So just a brief reflection on pollutant offsets. It's
19 an issue that's of concern and of interest to many
20 parties, including us and I would say including the
21 Board. And what I present here is a reflection on sort
22 of our conditional support for the State Board's effort
23 to build such a policy. And when I say 'our,' it
24
25

1 includes you, because we actually -- this language,
2 these points are reflected in language in the
3 previously approved basin plan, with some minor
4 revisions this time. That we support a pollutant offset
5 program, on the condition, though, that it be
6 demonstrated to be a more cost-effective and efficient
7 means of achieving water quality standards. The prize,
8 it's our goal, is to achieve water quality standards.
9 Not to trade, not to create offsets. So if there's a
10 better way, then that better way can be facilitated
11 through offsets, we support that.

12
13
14
15
16 Under two key conditions, though. That the offset
17 effort has to consider the different pathway -- for
18 example, how mercury can get to the system. So it may
19 not be -- we have to account for different pathways may
20 be more available to get into the food web than others.
21 And we want to make sure that's accounted for.

1 And most importantly, if there is any offset, it has to
2 be done with assurances that the offset doesn't result
3 in local effects by a discharge that's being offset
4 elsewhere. And those are the safety conditions that I
5 believe -- this reflects the whole gamut. We think
6 there's ways that it may be more efficient and cost-
7 effective, but proceed with caution in terms of
8 managing the system, in terms of threat to the
9 environment, both globally and locally.
10
11

12
13 So, I want to end with just emphasizing that many
14 efforts are underway. These include developing a
15 watershed permit that would address implementation of
16 the Mercury TMDL for all waste water dischargers.
17 We're also developing permit requirements that would
18 apply to the municipal storm water permits, the urban
19 runoff permits. We have work underway regarding the
20 Guadalupe River watershed Mercury TMDLs. Carrie
21 alluded to the Central Valley Board's efforts to
22 establish TMDLs.
23
24
25

1 And very importantly, some key studies are underway
2 that will address waste water local effects, the fate
3 of mercury in Bay sediments. As Carrie pointed out, we
4 guesstimate that's the single largest -- the largest
5 source of mercury in the Bay, but we really don't
6 understand the true fate of that. And there's an
7 extensive study underway now funded by the Clean
8 Estuary Partnership and the Regional Monitoring Program
9 to address that.
10
11

12
13 And we also have concerns about production of methyl
14 mercury in wetlands. And we're fortunate that the Bay
15 Area was able to get a Prop 13 grant on the order of
16 \$1.3 million to address this issue. But this issue is
17 also already being -- or has been, is being addressed
18 via the Hamilton Air Force Base Restoration Project,
19 and the South Bay Salt Pond efforts.
20
21

22
23 The key concern is that wetlands can be methyl mercury-
24 producing machines, and we don't want to create -- get
25

1 the benefit of restoration and create a problem. So
2 we're fortunate. And I can also say CAL-FED has put
3 huge amounts of resources to the issue of mercury
4 science that we're working with, and familiar with.
5

6
7 So our goal is to get on with implementation and we
8 hope you recognize our -- sort of the urgency, our
9 concern to get beyond the resolution of these remand
10 issues and focus our attention, our valuable resources
11 on the implementation issues.
12

13
14
15 So, obviously the next step -- you already know these,
16 but we will have to respond to all written comments
17 received and oral comments today. We intend to prepare
18 a revised package with those response to comments, and
19 as necessary, revisions to the Basin Plan Amendment
20 package for your consideration in August.
21

22
23
24 CHAIRMAN MULLER: Thank you, Tom.
25

1 MR. MUMLEY: And that ends our presentation. Thank you.

2
3
4 CHAIRMAN MULLER: Clifford.

5
6 MR. WALDECK: I think I need to understand better
7 pollution offsets. Because when I think of pollution
8 offsets, I think of -- you know, you have a load of
9 five and my farm has zero, and Muller's farm has 10.
10
11 So he buys mine --

12
13 CHAIRMAN MULLER: Time's up, Clifford.

14 [Laughter.]

15
16
17 MR. WALDECK: No, but I mean, how does pollution offsets
18 work in this particular world? Because I think I have
19 a little overly simplified thought of it, there.
20

21
22 MR. MUMLEY: Well, there is no simple answer to your
23 question, because it's very complicated to how to make
24 sure you're not creating apples with oranges, and where
25

1 are the apples and where are the oranges. They're very
2 critical. How do you determine that this regulated
3 discharge at this level can be offset by reducing a
4 discharge elsewhere, comes with a lot of critical
5 questions that have yet to be resolved in terms of,
6 well, what is the relevant scope of other sources that
7 could be offset within the affected area of a
8 discharge. And this is done a lot in the air world, but
9 the airshed doesn't have as many physical boundaries as
10 our watersheds do. So it would be -- how far away can
11 a waste water discharger, for example, say, rather than
12 implementing what would deemed to be extensive,
13 expensive new treatment works.

14
15
16
17
18
19 Rather than spend the money on new treatment works,
20 spend less money to reduce more mercury elsewhere. The
21 question is, how -- what formula would one use, what
22 regulatory approval mechanism would one use, are all
23 questions that are going to take some serious policy
24
25

1 considerations by the State Board. It ain't gonna be
2 easy.

3
4
5 I just want to say, within the context of a TMDL, if we
6 found a better combination of allocations when adding
7 up to the TMDL that would solve the problem, by design
8 the TMDL can be responsive to a sort of a trading
9 scheme. And that's not -- that's something that may
10 happen within our own scheme.

11
12
13 MR. WALDECK: And then I understand we might have to get
14 to that point, of saying it. But I would put that way
15 down on the priority scales as to how to actually
16 attain it. Because even having that out there, I just
17 think of it as an enviro-weasel factor. You know, that
18 somehow, you know, I don't have to hit my point,
19 because if I can find somebody to horse trade with,
20 then I don't have to hit the point where I'm at.

1 MR. MUMLEY: True. And then the way we've designed our
2 proposed approach here, has sort of offset as a
3 contingency, and it could be argued that it may not be
4 necessary. And our approach is that it hopefully won't
5 be necessary because through pollution prevention
6 efforts that have happened and will happen -- I mean,
7 more and more, you know, dental amalgam is being
8 addressed. It's already showing some true benefits.
9 And planned treatment upgrades for other reasons,
10 dealing with other pollutants, dealing with needs to
11 improve water for recycling, et cetera, et cetera, all
12 add up to what's necessary to attain these allocations.
13
14
15

16
17 So I believe those plays have to be allowed to play
18 out, while the possibility of an offset could get
19 crafted. So it's, I guess, it's -- again, we don't,
20 there is no offset policy to use at this point in time.
21 I mean, there is a certain amount of, I guess, faith on
22 the part of the dischargers that they won't be held to
23 waste load allocation that would require costly
24
25

1 treatment upgrades if a benefit can't be demonstrated.
2 The premise of our approach here is that will only
3 happen with demonstrated benefit, and not just for
4 mercury but for all the pollutants, or for other
5 regulatory drivers.
6

7
8 So it's all going to add up in the long run. And
9 pollutant offsets aren't, can't be -- aren't and can't
10 be used as a reason not to take appropriate action.
11

12
13 MR. WALDECK: Okay, that's good. I just -- I'm glad I
14 asked.
15

16
17 MR. MUMLEY: To be used, not abused. And I think that's
18 fundamental to the conditions that I expressed, that we
19 have asserted and that we championed, and any dialogue
20 in terms of establishing an offset policy. Offset
21 policy is to be used wisely, and it must be crafted
22 such that it can't abuse the environment.
23
24
25

1 MR. WALDECK: Thank you.

2
3
4 MR. WOLFF: If I could comment on this topic. The
5 existence of an aggregate limit for the waste water
6 treatment plants, and a separate aggregate limit for
7 the refinery, or maybe the industrial dischargers,
8 mostly refineries. I mean, their existence is because
9 there's a belief somehow that those groups working
10 together can more -- can achieve more than working
11 individually. And this is the basic premise of the
12 watershed topic I raised earlier, and it goes to this
13 issue of why you might want to allow pollutant trading,
14 or pollutant credits, or whatever we want to call it,
15 offsets, any of that.

16
17
18
19
20 Because by working as a group more can be achieved with
21 the same dollar investment, than everyone working
22 individually. That's the basic concept. And I fully
23 support that concept, and I think we need to cautiously
24 move forward with that concept. And the main concern
25

1 that is voiced, that is raised in opposition to that
2 concept is that we're simply going to move pollution
3 around, we're not going to achieve any more reduction.
4

5
6 And this goes to the issue of whether the pollutions
7 that we call an anonymous pollutant. Okay, so if
8 greenhouse gas emissions, for example. Carbon dioxide
9 released in the United States or released in China or
10 someplace else -- it doesn't make any difference, they
11 all have the same harm to the environment.
12

13
14
15 So a trading regime that finds the lowest cost way of
16 reducing carbon dioxide emissions is a good thing,
17 because then for any given amount of money we can
18 reduce emissions more. But it's because the pollutant
19 is anonymous.
20

21
22 When we come to mercury in the Bay, if all mercury's
23 the same and it doesn't matter where it's discharged,
24 than a trading regime or offsets or credits, whatever
25

1 you want to call it, will be a good thing. Because
2 we're getting more mercury reduction out of every
3 dollar of investment. But it depends on mercury being
4 anonymous. And if it turns out that where you release
5 the mercury is critically important to the harm that
6 occurs, it's not anonymous, and that's why these local
7 impact studies are crafted in the TMDL as well. You
8 can't let people engage in trading unless we know there
9 aren't local impacts. Unless the only impact is an
10 aggregate impact.
11
12
13
14

15 MR. MUMLEY: I'm glad you're going to be sitting on the
16 State Board when they're considering development of an
17 offset policy.
18
19

20 CHAIRMAN MULLER: Shalom? Jo?
21

22 MS. DELUCA: Yes. I do find that the more we talk about
23 it, the better I can conceptualize what you're talking
24 about. But my question is very simple. What is the
25

1 incentive to the discharger who has the credits, to
2 give? I understand what the incentive is to the
3 discharger who has an abundance of discredits, if you
4 will, who is seeking to have some relief. But what are
5 the incentives to the one who is going to be asked to
6 give up something that is quite valuable?
7

8
9
10 MR. MUMLEY: The prime incentive -- and maybe I would
11 like you to ask that to the discharger community
12 themselves, so I'm not misstating what I believe is
13 their incentive -- is that they want this approach to
14 work. They -- put it this way: dischargers have an
15 aversion to effluent limits, and it's not a surprise.
16 Though it's the quintessential tool that we've used
17 historically to make things happen, in the context --
18 particularly of this TMDL, we're asserting that we
19 don't need to exert that command and control tool as
20 explicitly as has been done. They welcome and
21 celebrate that, and they by design are committed to
22 make the whole work.
23
24
25

1 Because for this to work, they have to assure us that
2 it's all for one and one for all, is really what it
3 boils down to. So it's not this individual versus that
4 individual, it's the group all has to perform. And I
5 think the backbone by this is that the biggest
6 dischargers, the prime players in the Bay Area Clean
7 Water Agencies are the ones who will champion this.
8
9

10
11 I forget the number offhand, but the five main
12 dischargers make up a substantial portion of the
13 mercury load from all of them. Out of 60 dischargers,
14 a significant amount just comes from five, and they're
15 the five proactive players that who are championing the
16 cause. So it's in their interest to make it work, I
17 guess is the answer.
18
19

20
21 But then they also have to communicate to us how it is
22 working. And we'll have plenty of early warning, or
23 warning in general, whether it is playing out the way
24 we perceived or not. And that it -- there are plenty
25

1 of enforcement mechanisms that we can exercise if we
2 feel that it's not working, short of coming back and
3 changing the TMDL. It doesn't look like I've satisfied
4 you.
5

6
7 CHAIRMAN MULLER: Shalom?
8

9
10 MS. DELUCA: Oh, no. I'm wondering where is the trade?
11 Where does the trade take place, how does the trade
12 take place, actually/
13

14
15 MR. MUMLEY: Well, the trade is -- we're not
16 establishing a trading mechanism in this TMDL, per se.
17 That doesn't exist yet. I mean, if -- we've considered
18 but decided that we're not ready to express an option
19 that within a category like municipal waste water,
20 individuals could trade amongst themselves within the
21 cap. That's territory that's worthy of further
22 exploration that we would consider, but we weren't
23 ready to put forward something along that line now,
24
25

1 because of the details that you're asking about would
2 have to be resolved. So it's --

3
4
5 MS. DELUCA: Thank you.

6
7 CHAIRMAN MULLER: Shalom, and then Margaret.

8
9
10 MR. ELIAHU: Yes. Tom, I have a problem, really,
11 justifying how we can reduce the waste load by 33
12 percent. The total waste load of all the mercury
13 coming to the Bay is only 1.5 percent of the total.
14 And, really, if we eliminate all that waste load at
15 all, it won't do any impact on the Bay. I think we are
16 going after the small guys.

17
18
19
20 If we go into the big ones, which is Central Valley and
21 urban runoff, and reduce that by another half a
22 percent, we establish the same thing. And here, which
23 might be too expensive to reduce that by 33 percent,
24
25

1 waste load, and it will be very cheap to reduce the
2 other big guys by half a percent.

3
4
5 MR. MUMLEY: Well, in response, I totally respect and
6 appreciate and share the concerns you expressed. But
7 we are being responsive to the remand, and just --
8 maybe two perspectives. One is that the reduced waste
9 load allocations are designed to be consistent with
10 what we believe to be implementable pollution
11 prevention and treatment improvements, things that
12 should be recognized anyway. So we're basically
13 continuing to provide encouragement to do the best we
14 can, because it's good to do the best you can. Even
15 though from a water quality perspective, it's hard-
16 pressed to say that there's going to be an explicit
17 benefit when we reduce what already is a small
18 component of a big problem smaller, while the big
19 problem still is in our face.
20
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1 Relative to the big problem, the two biggest sources
2 that we realize is erosion of the Bay sediments and the
3 Central Valley input. The good news is sediments
4 coming in from the Central Valley are cleaner than the
5 historical depositions in the Bay. So, the Bay
6 sediments are going to get cleaner each day that
7 there's runoff from the Central Valley.
8
9

10
11 And I'll say it again, the quality of sediment coming
12 in from Central Valley runoff, on average, is better
13 than the quality of sediments already in the Bay. So
14 this huge amount of sediment that comes in from the
15 Central Valley is part of the cleanup of the Bay.
16
17

18 The concern with this huge amount of mercury in the Bay
19 is the subject of a concerted, a very concerted effort
20 by our part to better understand how much of that
21 existing Bay sediment is truly getting re-introduced,
22 or introduced into the environment, into the food web.
23
24
25

1 And that's a big question. Our estimate is somewhat of
2 a worst case scenario, I'd like to assume.

3
4
5 So you're right, we're putting attention to those big
6 sources. We've put attention to waste water, one of the
7 small sources, I guess, if you will, because we have to
8 to be responsive to the remand. And otherwise, to
9 reflect the good efforts of many of the Bay Area waste
10 water dischargers already, and their planned continued
11 good efforts.

12
13
14
15 MR. ELIAHU: Well, I realize you have to respond to the
16 remand. Okay, fine. The remand doesn't tell you reduce
17 it by 30 or 40 percent. Let's reduce it by a token
18 number, or 10 percent. This would be my suggestion, to
19 reduce it by 10 percent. Just a token. I don't think
20 we're going to make any effect at all.

21
22
23 CHAIRMAN MULLER: Margaret?
24
25

1 MS. BRUCE: Yeah, a quick question. On the Central
2 Valley's TMDL, Mercury TMDL, do you know what their
3 water quality objective is that they're working toward?
4 What are their goals, and is there a way of showing us
5 -- not now, but in the future. So if their TMDLs are
6 implemented as a vision, the Central Valley loading
7 will look like what? And do their water quality
8 objectives -- and maybe this is a question for the
9 State Board, but I'm just trusting that maybe your
10 experience and wisdom would know the answer -- when
11 their waste load allocations are determined, is it
12 taken into account that their water flows to an already
13 impaired area, and therefore will they be more
14 stringent?
15
16
17
18
19

20 MR. MUMLEY: I can answer your question. First, the
21 Central Valley Board is establishing Water Quality
22 Objectives with their TMDLs. And they're establishing
23 Water Quality Objectives consistent with the ones that
24 we are proposing for your consideration. They are
25

1 levels of mercury in fish that humans consume and
2 wildlife consume, and they're entirely consistent with
3 what we're doing. There's maybe an issue, depending on
4 what water body they're dealing with -- there may be a
5 difference in local consumption rates, but I'm pretty
6 certain what they're doing with the Delta and the
7 development of their objectives is entirely consistent
8 with ours.
9
10

11
12 Two, by design -- and this was a key issue raised
13 during the State Board hearings to consider approving
14 what we brought before them two years ago, was that --
15 was assurances that our efforts would be integrated and
16 coordinated with the Central Valley Board efforts. And
17 even like is the Guadalupe River Mercury TMDL being
18 coordinated with this, and we said, 'yes, we are self-
19 coordinating.'
20
21

22
23
24 But we do have a close working relationship with the
25 Central Valley Board staff, and we're working closely.

1 State Board, when it takes action to approve any of
2 these TMDLs, will be asking the question that you've
3 asked. So, yes, yes, yes, that is all happening.
4
5 Details, of course, to follow. And I believe what we
6 intend to do is to more firmly recognize that sort of
7 partnership with the Central Valley Board, and State
8 Board staff. So I think you will see more
9
10 communication along that line more formally expressed
11 for outside parties, so we can demonstrate that we
12 indeed are coordinating our efforts, using the best
13 available science.
14

15
16 MS. BRUCE: Okay. Tom, and to the extent that you can,
17 when we see this again, could you show us what those
18 hypothetical TMDLs will bring us, in terms of reduced
19 mercury loads from the Central Valley? Just to see,
20 visually, like your wonderful charts have shown us,
21 what are the proportional loads, and what will their
22 and our collective efforts gain us?
23
24
25

1 MR. MUMLEY: We'll give that a shot. The challenge will
2 be to simplify it, but not to make it too simple that
3 it --
4

5
6 MS. BRUCE: And with the caveat that we know that this
7 is a work in progress.
8

9
10 MR. MUMLEY: Thank you.
11

12 CHAIRMAN MULLER: Gary and then --
13

14
15 MR. WOLFF: He can go ahead.
16

17 MR. ELIAHU: Just another information. The Bureau of
18 Reclamation is just now saying they're going to retire
19 a big chunk of land west of Highway 5.
20

21
22 MR. WOLFE: The Westlands Water District.
23

24
25 MR. ELIAHU: No, Bureau of Reclamation.

1 MR. WOLFE: Well, right. But the area is called the
2 Westlands Water District.

3
4
5 MR. ELIAHU: Westlands Water District. Does that have
6 any impact on the mercury and what's -- just recently I
7 read it.

8
9
10 CHAIRMAN MULLER: That's selenium and salts (phonetic),
11 is that correct?

12
13
14 MR. MUMLEY: I have no reason to believe that it would
15 have an effect, but I don't have a better answer than
16 that. But we'll certainly --

17
18
19 CHAIRMAN MULLER: One of our speaker cards could briefly
20 comment on that, I think. We have a number of them
21 here.

22
23
24 MR. MUMLEY: We'll certainly look into that.

25

1 CHAIRMAN MULLER: Mary, quickly?

2
3
4 MS. WARREN: Yes. I just have a quick question. While
5 we're working on our TMDL program, Central Valley's
6 working on theirs, is that correct?

7
8
9 MR. MUMLEY: Yes.

10
11 MS. WARREN: What is -- is their time schedule the same
12 as ours? Like, we're saying for approval, tentatively
13 in August. Will theirs be up in August?

14
15
16 MR. MUMLEY: Dyan, do you have -- know the dates better
17 than I do?

18
19
20 CHAIRMAN MULLER: Well, they have a couple different
21 ones, I believe.

22
23
24 MS. WARREN: Well, the reason I'm asking is if we do
25 one, and theirs is less stringent than ours, what

1 happens? What kind of coordination are we going to
2 have?

3
4
5 MS. WHYTE: This is Dyan Whyte. I think the most
6 critical one is the Delta TMDL. They have others that
7 are further upstream from the Delta, and those clearly
8 need to be integrated with the Delta, which is part of
9 the receiving water body related to those upstream.
10

11 And I believe they're just out for peer review, and my
12 recollection is they're scheduled for adoption around
13 December. So they are a few months behind us.
14

15
16 We have been communicating with them. I've been on a
17 number of conference calls discussing objectives,
18 discussing our sediment target in particular and how
19 that relates to the Delta TMDL. So they are taking our
20 TMDL and what we have in there, in terms of the Central
21 Valley allocation into consideration in their
22 developing their own TMDL.
23
24
25

1 So they will be before the Board, most likely after our
2 TMDL.

3
4
5 MR. MUMLEY: So let me just clarify that. We are
6 coordinating with the staff at the Central Valley
7 Regional Board. Based on our staff level of
8 coordination, their efforts are consistent with, or at
9 least as stringent as ours. They recognize that their
10 TMDL must ultimately meet the allocation that our TMDL
11 would require of them. They're well aware of that, and
12 then the -- I guess the back stop is the State Board
13 would be -- has to approve -- our TMDL has to approve
14 their TMDL, and the State Board's already exercised
15 their concern that requires us to assure that these
16 efforts are integrated and coordinated.
17
18
19

20
21 So, per chance, the Central Valley Board were to act to
22 establish a TMDL not stringent enough to implement our
23 allocation to the Central Valley Board, the -- my
24 presumption is the State Board would call that on them.
25

1 Because they would have to approve their TMDL, they
2 would have to approve their TMDL in the context of,
3 presumably, a TMDL -- our TMDL that they approved. So
4 that's where the State Board comes in handy, I guess,
5 when you have issues that cross regional board
6 boundaries, the higher body takes on that
7 responsibility to ensure consistency amongst them.
8
9

10
11 MS. WARREN: Well, my concern just is that if we reach
12 an agreement on the TMDLs in August, and we pass it,
13 and two months later Central Valley does, and theirs
14 isn't as stringent as ours, what mechanization do we
15 have that they would come together? Or if theirs is
16 less than ours, we have to take all of their mercury,
17 which is added to ours. So ours is twice as bad. Is
18 there a mechanization to -- I don't know how to put
19 this.
20
21

22
23 We inherit some of their mercury. So our mercury, what
24 we develop plus theirs, how do we handle that?
25

1 MR. MUMLEY: Well, Ms. Warren, I guess to restate -- we
2 are giving them input on their TMDL, and vice versa,
3 they have given us input on ours. So at the staff
4 level, we are designing them to be consistent. But
5 what actually gets approved by the respective boards is
6 what's at issue.
7

8
9
10 And if it turns out that there is a difference between
11 the two, and theirs, as you say, is less stringent than
12 ours, I'm saying the State Board has a responsibility
13 to correct that.
14

15
16 MS. WARREN: Then step in.
17

18
19 MR. MUMLEY: And then, of course, we would comment on
20 theirs. We would make comment that their TMDL is not
21 stringent enough to implement.
22

23
24 MS. WARREN: To match ours.
25

1 MR. MUMLEY: Our allocation, and it would be our
2 interest -- your interest, and I guess we as Staff
3 would represent your interest by providing testimony
4 before the State Board when they would consider
5 approving what we believe to be a less stringent TMDL.
6

7
8 MS. WARREN: Okay. Thank you.
9

10
11 CHAIRMAN MULLER: We have a lot of cards. Gary, did you
12 have any comments?
13

14
15 MR. WOLFF: Yeah, three questions for you, Tom. The
16 first one has to do with a sentence on the top of Page
17 A-16. This is that sentence -- Appendix A, Page 16.
18 It's the first sentence of the first full paragraph on
19 the page. This is that sentence we struck out of the
20 Pesticide TMDL. It says mercury now, but you say
21 pesticide.
22
23
24
25

1 "An urban runoff management agency that complies with
2 these permit requirements shall be deemed to be in
3 compliance with the receiving water limitations
4 relative to mercury."
5

6
7 This is an illogical sentence because you could do all
8 those things perfectly, and you could still have
9 receiving water violations. So I ask for it to be
10 removed in the Pesticide TMDL, and it kind of keeps
11 coming back like a bad dream.
12

13
14
15 I'm curious. Did the Staff really want this sentence
16 here, or was it an oversight? Why is this sentence
17 still there?
18

19
20 MR. MUMLEY: The sentence is still there because it was
21 in what was approved before. And it wasn't a subject
22 of the remand order, and that we're aware of it being
23 an issue, we purposefully chose not to directly address
24 it. Because we were careful not to take on issues
25

1 beyond the remand, because of the snowball effect. How
2 far do we go touching everything. So we just wanted to
3 be careful about taking on items beyond what was
4 necessary to respond to the remand. Particularly in
5 this item, as I think you remember me saying during the
6 previous hearing, that we consider it an
7 inconsequential as written, although there is a
8 different -- you know, the dischargers believe it is of
9 benefit, and other interests think it's an unnecessary
10 safe harbor. And we keep saying it's really what's --
11 you know, by design we have a very multifaceted
12 implementation scheme that supersedes that statement,
13 anyway.

14
15
16
17
18 So we just chose not to make it part of this cleanup
19 effort. The issue is still, I guess, on the table to
20 be -- it was embedded in the comments, obviously, by
21 one of the commentators.
22
23
24
25

1 MR. WOLFF: I would suggest that if Staff believes it's
2 inconsequential, it's best to get rid of it. Just like
3 you would issue a supplemental to get the pagination
4 right. But I don't want to take that up now, I just
5 wanted to make that point.
6

7
8 MR. MUMLEY: Yes. Okay.
9

10
11 MR. WOLFF: The second question has to do with methyl
12 mercury. You know, is it possible that five or ten
13 years from now, when the studies come in, that the
14 total mercury allocation that's in here be either
15 replaced or have an addition to it of methyl mercury
16 allocation. Because we've learned a lot more about
17 methyl mercury and we discover that's where the real
18 biological problem is.
19
20

21
22 MR. MUMLEY: Yes.
23
24
25

1 MR. WOLFF: Okay. So I would suggest that some wording
2 to that effect be included in the TMDL before it's
3 finalized. A couple of sentences here and there,
4 clarifying the importance of the methyl mercury issue,
5 I think will do a lot for people seeing a possible
6 future course of action.
7

8
9
10 MR. MUMLEY: I mean, the answer is yes, of course -- I'm
11 trying to keep things brief. But there already is
12 language where that yes is implicit. Maybe you might
13 want us to consider making it more explicit, because by
14 design this is what we call an adaptive -- this TMDL
15 will be adaptively implemented. As we gain more
16 knowledge of the system, we want to improve the TMDL
17 accordingly. And the knowledge we need is how methyl
18 mercury operates.
19
20

21
22 Whether that actually gets reflected as a methyl
23 mercury allocation scheme is, of course, still to be
24 determined. But it may be. So I think we can easily
25

1 respond to your concern by clarifying that possibility.

2 And that wouldn't be considered a -- I'm trying to --

3 I'd like to avoid consequential changes that --

4
5
6 MR. WOLFF: I understand.

7
8 MR. MUMLEY: But I think that's probably something we

9 ought to be able to fix for you.

10
11
12 MR. WOLFF: And then just a quick question for legal
13 counsel. I actually have some wording on that topic I'd
14 like to suggest to Staff. Can I just give them that
15 afterwards, or do I need to read it into the record?
16

17
18 MS. WON: For purposes of informing the public that's
19 here today, it might be useful for you to read it into
20 the record.
21

22
23 MR. WOLFF: Okay. Let me read these issues on methyl
24 mercury, then, into the record. On Page A-24, there's
25

1 a question, a list of questions under adaptive
2 implementation. I was going to add a sentence in the
3 midst of one of the questions, the third question. Add
4 this sentence: "In particular, is there new evidence
5 regarding methyl mercury that might justify a methyl
6 mercury TMDL or allocation, either in addition to or
7 instead of the total mercury approach used initially in
8 this Basin Plan Amendment."
9
10

11
12 And one other insert on this topic, on Page A-18, the
13 last bullet, and also on Page A-20, the fourth bullet.
14 These are bullets about studies that are being
15 required. So this would clarify a little more about
16 what the studies are about. We would add a couple of
17 sentences that say, "Conduct or cause to be conducted
18 studies aimed at better understanding mercury fate
19 transport, biological uptake --" that's all there
20 already -- "and the conditions which methylation occurs
21 in the San Francisco Bay and tidal areas."
22
23
24
25

1 And then another sentence: "The first such studies
2 shall be completed no later than --" and I said "four
3 years after adoption of this Basin Plan Amendment by
4 the Regional Board." The clarification I want is, it
5 says studies are required; it doesn't say in what time
6 frame, and it's a very long TMDL time frame. So I just
7 wanted to say something about when the first round of
8 studies are required.
9
10

11
12 My third question has to do with this very difficult
13 question of individual enforceable permits, permit
14 limits for mercury, which some of the people are going
15 to comment on. You said something to the effect that
16 if we were going to craft individual limits, it would
17 be entirely different -- enforceable individual limits
18 for the permits, it would be different than the waste
19 load allocations that were in the TMDL. Well, I need
20 some better understanding of that.
21
22
23
24
25

1 How do those waste load allocations in the TMDL compare
2 with the existing limits that are in the permits?
3

4
5 MR. MUMLEY: Okay, let me see if I can give you the most
6 -- the existing limits in permits, there are interim
7 limits that reflect, at the time they're issued,
8 performance from that particular discharger. So they
9 are -- the existing limits in permits are performance-
10 based mass limits. Now, back to what we -- our grand
11 scheme of things. We start with dealing with reducing
12 total mercury as a whole, and then we think about the
13 various sources and working now from the whole, we say
14 waste water as a whole is allocated this allotment of
15 the whole. And that's -- allotment reflecting existing
16 total combined aggregate, is like now your revised
17 calculation, like 18 kilograms per year.
18
19
20

21
22 We then take that and parse it into individuals, based
23 on a relatively simple formula. I believe it's a
24 percentage of each individual's percentage of the total
25

1 flow of discharge to the Bay, and a percentage of their
2 reflected percentage of the mass flow to the Bay. So
3 it's considering the flow from a plant and the mass
4 from the plant, and then it's sort of one size fits
5 all. It's kind of like 80 percent, 20 percent, and we
6 didn't go down to looking at each individual one and
7 say, "is this the right way to allocate to that
8 discharger, to reflect current and potential pollution
9 prevention and treatment schemes."
10
11

12
13 So the (inaudible) is if you're going to turn these
14 into limits, we would have to take the time to make
15 sure we allocated to all the individuals in a fair and
16 equitable fashion, accounting for all factors that
17 would be raised in terms of consequence, cost and the
18 like. So that's what I mean. By looking from the big
19 picture, we felt that let's take this approach.
20
21

22
23 MR. WOLFF: I understand, thank you.
24
25

1 MR. MUMLEY: Okay, so you get the message now.

2
3
4 MR. WOLFF: So then the follow-up question is, you've
5 stated in the Staff Report that these individual limits
6 could be enforceable. They're not intended to be
7 enforceable in the TMDL, but they could be enforced,
8 through citizen lawsuits or something, isn't that
9 correct?
10

11
12 MR. MUMLEY: Yes.
13

14
15 MR. WOLFF: Well, so, doesn't that put the dischargers
16 at risk? They've got this number that was a percentage
17 of a total. It's not based on your historical mass
18 emissions, it's not based on their individual plant or
19 service area, or anything else. It's just a
20 proportioning of 18 kilograms, and now they're at risk.
21

22
23 MR. MUMLEY: Correct. But by design, there's sort of a
24 buffer allowed by the group approach, and the triggers.
25

1 Because the triggers kick in. If a discharger --
2 actually, just to get into detail, because we're
3 calling for a rolling 12-month calculation of load,
4 versus the limit would apply as a calendar year
5 average. And so there's somewhat of an early warning.
6 But the trigger requires an evaluation, what caused it,
7 what are the consequences, what can be done about it.
8
9

10
11 The information that we would need to actually kind of
12 decipher whether that it was something that was
13 controlled or uncontrollable. I mean, the information
14 that would be needed in order to craft limits that were
15 more logical for that particular discharger -- the case
16 I'm making is because the group as a whole, by
17 considering them altogether, there's sufficient buffer
18 within the system, unless all of them are poorly
19 performing at the same time, there is less of a
20 consequence that we would have to take that enforcement
21 action on the discharger than if it was directly
22 implemented as an enforceable limit.
23
24
25

1 MR. WOLFF: I understand with respect to the actions of
2 the Board, but I'm thinking about the statement that
3 third parties can sue over these limits, that these are
4 enforceable limits in court. But the limits themselves
5 don't really have a very solid basis in terms of the
6 ability of that plant to comply. It strikes me as a --
7 I don't know, a dangerous course of action to pursue.
8
9 Either they're not enforceable, and we're enforcing a
10 group limit; or they are enforceable and they're based
11 on sound science. And we've got something that's sort
12 of halfway in between, and I'm very uncomfortable with
13 it.
14
15

16
17 MR. MUMLEY: I appreciate your concern. The other added
18 answer would be, we would have to be really explicit
19 about how this works in the permit or permits
20 themselves. So as how limits are expressed in the
21 permit, how the permit conditions are expressed relates
22 to how they will be enforced, so that they're not
23 subject to different interpretations. So our intent is
24
25

1 through the design of this implementation scheme via
2 the Basin Plan Amendment is to set the stage to work
3 out the details in the permit itself. And it's in the
4 crafting and the public comment, review and Board
5 action on the permit, where we would actually clarify,
6 shore up all these details relative to how and when and
7 by whom would enforcement action happen.
8
9

10
11 MR. WOLFF: Okay, thank you to the Board for your
12 indulgence. I'm just going to read, if I could, a few
13 sentences into the record, then, in terms of how I
14 would like to see this addressed. This has to do with
15 the -- on Page A-19, the first full paragraph under
16 Waste Water Treatment Plant, where it says if you
17 exceed your individual waste load allocation, then you
18 submit some reports.
19
20

21
22 I've replaced that with, "If a facility exceeds its
23 individual mercury load allocation, or an effluent
24 mercury trigger concentration, it shall be in violation
25

1 of its permit unless it has both obtained a credit for
2 additional discharges through the procedures specified
3 in its permit, and (b) demonstrated no local effects of
4 mercury discharges according to the criteria specified
5 in its permit. Permit limits plus credits obtained, or
6 minus credits granted to other dischargers shall be the
7 enforceable numeric criteria for determining individual
8 violations."
9
10

11
12 So we would have a system where we would have
13 individual limits, enforceable, based on good science.
14 However, we would also allow the group effort to work,
15 so long as people can show that it's an anonymous
16 pollutant, as I was talking about earlier. We get both
17 of those benefits. It's the traditional system of
18 individually enforceable limits, but we're also
19 breaking new ground in terms of a group activity.
20
21

22
23 Now, I know there's some work in developing that. It's
24 not so much work in the TMDL, it's work in the
25

1 subsequent permits. But I think it's worth doing, even
2 though this is only two percent of the mercury load.
3 Because two percent is a great place to start, because
4 if you get something wrong or we discover problems in
5 it, it was a nice little pilot project, right? It's
6 not 98 percent of the problem, it's a small percent; we
7 can develop something new and innovative. So that's my
8 suggestion as to how to proceed, and I just wanted to
9 enter that.

10
11
12
13 CHAIRMAN MULLER: So noted. Okay, I think what we'll do
14 is, we have 10 cards. So let's just -- hopefully we
15 can grind through these here, and try to make your
16 comments as brief as possible. Oh, we're getting more,
17 maybe. It doesn't matter. And I have the cards in
18 order the way I've received them, more or less, and
19 we'll do the best we can in that order.

20
21
22
23 So the first one will be U.S. EPA, Diane Fleck again,
24 please. And followed by Jim Kelly, right. Jim, are you
25

1 still -- yeah, Jim's here. And then Andria Ventura
2 from Clean Water Action. Is it Andria? Yeah. So,
3 one, two, three and then I'll do one, two, three again
4 when we get through those. And I thank everyone for
5 their patience in this. This is -- we've had a couple
6 tough meetings in the last couple months here. When you
7 get to Sacramento, Gary, see about that 91 bucks, if
8 you could pump it up a little bit.
9
10

11
12 MR. WOLFF: It was proposed in the budget this year, and
13 you know, I'll continue to push it. I didn't push it
14 previously, but I will push it.
15
16

17 CHAIRMAN MULLER: We're not here for the money, we're
18 here for the glory. Oh, that's right, I took ethics
19 training. I'm not supposed to talk about money. Oh,
20 the hell with it, give us some money. Okay, go ahead.
21
22

23 MS. FLECK: Good afternoon, again. My name is Diane
24 Fleck. I'm with U.S. EPA Region 9 in San Francisco.
25

1 U.S. EPA, again, would like to thank Staff for all
2 their hard work on crafting these amendments. We are
3 very pleased to see these changes. We fully support
4 the proposed standards actions and wish to thank Staff
5 in particular for their very thorough work in deriving
6 the new fish tissue objectives.
7

8
9
10 We also fully support the revised waste load
11 allocations in the TMDL, and wish to thank Staff for
12 these thoughtful and constructive changes. Concerning
13 the revised Water Quality Objectives, the revised
14 objectives chosen by Staff are fully protective of
15 human health and wildlife. We fully support the
16 adoption of the human health and the wildlife, fish
17 tissue objectives, and the recision of the current
18 water column basin plan objectives for San Francisco
19 Bay.
20
21

22
23
24 The human health values are based on the Seafood
25 Consumption Study completed in 2000, and they reflect

1 fish consumption rates and patterns for the Bay. The
2 wildlife values are consistent with U.S. Fish and
3 Wildlife Service analyses, and reflect protection of
4 piscivorous birds as well as threatened and endangered
5 species.
6

7
8 Concerning the TMDL, we support the more stringent
9 revised individual waste load allocations for municipal
10 dischargers, we support the application of compliance
11 triggers for municipal and industrial dischargers, and
12 the requirement for municipal and industrial
13 dischargers to monitor for mercury.
14
15

16
17 In conclusion, we fully support these proposed
18 amendments to the TMDL and to the water quality
19 standards. We're very pleased to see these changes,
20 and believe that they will help protect human health
21 and wildlife who consume the fish in the Bay. Thank
22 you.
23
24
25

1 CHAIRMAN MULLER: Thank you for sticking it out with us,
2 here. Jim?

3
4
5 MR. KELLY: Thank you, Chairman Muller, Members of the
6 Board. My name is Jim Kelly, I'm from Central Contra
7 Costa Sanitary District, 5019 Imhoff Place, Martinez,
8 California, 94553. I'm actually representing Central
9 San and Central San alone this time.
10

11
12 I really do think your Board Staff has done a wonderful
13 job. I think they've took a remand and did a good
14 effort on it, and I came here thinking this is
15 something I could come here and say, "Gosh, let's go
16 forward." We've made some very significant concessions
17 with the 20 and 40 percent reductions that we're
18 looking forward to providing for the overall
19 environmental good. What we did have in that is a
20 buffer, the watershed approach.
21
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1 The watershed approach provides us a way to combine our
2 resources, because it's not just this permit, not just
3 this TMDL, there's many others coming down the road for
4 water quality objectives containing actions such as the
5 copper/nickel that you'll see, cyanide, pesticides, PCB
6 where a lot of what we'll be looking at is a regional-
7 wide pollution prevention effort, where we'll be trying
8 to identify either public information efforts, working
9 with large industrial groups that is best done as a
10 region. And that's why we think putting this together
11 so that we can put our resources into a regional
12 approach in getting industries to reduce either things
13 that we have a hard time controlling -- fluorescent
14 bulbs is high right now, and you have individual
15 parties involved. How are you going to take care of
16 that. The universal waste laws made that very
17 difficult.

18
19
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23
24 You need to have a regional solution to how to deal
25 with our fluorescent bulbs. It's not there now. We

1 could be a catalyst, but we need an incentive. Such
2 approach as was suggested by Board Member Wolff is a
3 very interesting one, but the devil's in the details.
4
5 What does a credit mean? It's very difficult for us to
6 look at something where we're promising a 20 and 40
7 percent reduction, and having no knowledge what the
8 details are. Puts us in a way where we have no idea
9 where we're going to be in compliance.
10

11
12 While we are only two percent, we're the only people
13 that have a number. We're the only people who really
14 have been effectively enforced against. So this is not
15 just two percent, this is the folks that have a target
16 on our front and back. So that's probably the basis of
17 my comments, and I thank you for the opportunity to
18 comment.
19
20

21
22 CHAIRMAN MULLER: Thank you. And then following will be
23 Michelle and then Kevin.
24
25

1 MS. VENTURA: Hi. I was supposed to say good morning,
2 but I guess we're getting into afternoon, right? My
3 name is Andria Ventura, and I am with Clean Water
4 Action. Clean Water Action is also a founding member
5 of the Environmental Justice Coalition for Water, and
6 so I am here on behalf of the 60 or so organizations
7 that make up that Coalition as well.
8
9

10
11 And I have a number of things that I want to respond
12 to. We do thank Regional Board Staff for their hard
13 work on this TMDL and on the response to the remand,
14 it's not an easy process. We do think we've made some
15 very good progress, I do want to say that up front.
16
17

18 Not quite there yet. We obviously want to get this
19 moving, and so that's what I'm going to be talking
20 about right now. And the things that I'm going to talk
21 about that were covered in our written comments that we
22 submitted, along with Baykeeper and already see, I'm
23
24
25

1 going to focus on those things that I think pertain
2 most to environmental justice issues.
3

4
5 Before I do that, in response to some of the discussion
6 that we've had thus far, I wanted to say just a couple
7 of things. Some of the things that we're asking for to
8 be actually placed in the TMDL are because this plan
9 and this TMDL is going to take decades, we know that.
10 It's a big problem. And without codifying some of this
11 stuff in the TMDL, as opposed to current
12 implementation, we run the risk, I think, of not
13 ensuring that in the future the implementation will be
14 done with this goal in mind. And so that's where we're
15 coming from on that.
16
17

18
19
20 The other premise that we are starting from is
21 something that's been discussed, that not all mercury
22 is the same. And in fact, in regard to questions about
23 the Central Valley TMDL -- and I would add, actually
24 the Guadalupe TMDL, which I've also been involved in --
25

1 mercury is not treated as all the same. Methyl mercury
2 is treated and looked at in a somewhat more stringent
3 fashion than in this case. And so please consider that
4 that's where I'm coming from, as I make the comments
5 that I make.
6

7
8 I do want to start off by addressing the issue of
9 offsets. And one thing I am pleased to hear is that the
10 conversation that's occurred so far today reflects a
11 lot of thought, that people are coming at this hoping
12 to do an offset program if such is developed down the
13 road, correctly. And I think that Dr. Mumley tried to
14 make that clear, and some of the other comments makes
15 that clear.
16
17
18

19
20 That said, we do have a concern about how this is
21 phrased in the TMDL currently, and I'd like to tell you
22 why, and tell you exactly where we as environmentalists
23 and as environmental justice advocates come down on
24
25

1 this issue, because it's going to come up and be part
2 of this project.

3
4
5 On Page 25, the TMDL reads -- and forgive me for
6 reading the quote, but it says, "Approximately 10 years
7 after the effective date of the TMDL, or any time
8 thereafter, the Water Board will consider modifying the
9 schedule for achievement of the waste load allocations
10 or revisions to waste load allocations, if the State
11 Board has not established a pollutant offset program
12 that can be implemented in 20 years required to achieve
13 final waste load allocations."
14
15

16
17 What we feel that the wording in the current TMDL puts
18 an offset on the same footing as actually eliminating
19 the load, either through treatment or through pollution
20 prevention. And we do not feel that this is
21 appropriate. We see this as an out for dischargers,
22 frankly, that actually could serve as a disincentive
23
24
25

1 for some of them to take strenuous actions to actually
2 reduce their onsite loads.

3
4
5 Given the complexity of mercury and its environmental
6 impacts, we do agree, however, that there are potential
7 benefits to offset programs in certain cases. But only
8 with very specific and limited parameters would they be
9 acceptable, some of which Dr. Mumley actually outlined,
10 but I want to be very clear where we come down on this.
11

12
13 First of all, the environmental justice community would
14 see offsets as related to mercury in the Bay acceptable
15 only when a discharger has done everything within
16 reason to reach their load allocations in terms of
17 pollution prevention and treatment options. This is
18 the only time that we would see that this would be
19 acceptable, if they've done everything they can to deal
20 with their own load, okay?
21
22
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1 In addition, as Dr. Mumley said, they would have to be
2 able to reasonably demonstrate that there are no local
3 disparate impacts. That includes those disparate
4 impacts that result from inaction in the status quo.
5 It's not just from added action or getting, you know,
6 the ability to discharge more mercury because you've
7 got the credits from somewhere else. So inaction is
8 very important.
9
10

11
12 Only if such comprehensive actions are still not
13 adequate to reach load allocations would putting
14 resources toward creating a similar capacity elsewhere
15 in the Bay, such as mine remediation, would be both --
16 in that case it would be acceptable and beneficial, but
17 only in that case.
18
19

20
21 Consequently, on behalf of the environmental justice
22 community, we would advocate that reliance on offsets,
23 including the language on Page 25 that says that the
24 Board will consider modifications and schedules if no
25

1 offset language is developed in 20 years, we would
2 advocate that that actually be removed. Because on Page
3 26, you do have language that requires the reopener
4 clause for permits. And that is actually what the
5 State Board required in their remand. So you're kind of
6 covered. You bring up the issue of the remand in that
7 sense, and we think that's more appropriate.
8
9

10
11 I would also suggest, because the semantics actually
12 get confusing, and there is some -- there was a
13 question here about what an offset is. So I'd like to
14 suggest a different term, and it's not to play
15 semantics, it's because we really want to clarify what
16 we would -- what road we want to go do down here. And
17 perhaps call this off-site activities. Because one
18 thing that I want to make very crystal clear is that
19 such a program that would allow trading, okay, credit
20 trading, whatever you want to call it, is something we
21 would never, ever, under any circumstances accept. We
22
23
24
25

1 do see that as moving pollution around, it is against
2 the very premise of environmental justice principles.
3

4
5 Oftentimes when that happens, it is low-income
6 communities and communities of color that get, you
7 know, the disparate impacts of that. It also reflects
8 a mindset that we shouldn't do better than we currently
9 expect we're going to be able to do, if the
10 opportunities arise. And this, again, can serve as a
11 disincentive for dischargers to do all they can to
12 reduce, in this case, mercury loads. And I think you
13 would agree that would be a strange interpretation of
14 adaptive implementation.
15
16

17
18 So trading for us is something we do not accept.
19

20 Putting resources toward creating a similar capacity in
21 another manner such as mine cleanup, when everything
22 that could be done at the local level has been done, is
23 another issue.
24
25

1 I would also mention, just before I leave this issue --
2 because I do want to honor your request to be brief --
3 that when we were testifying before the State Board,
4 Clean Water Action did, through our canvass efforts,
5 present a letter to the State Board calling for many of
6 the things that we are asking for now and some of which
7 the Regional Board Staff has replied to.
8
9

10
11 We provided a letter that was signed by approximately
12 2400 Bay Area residents from a wide variety of
13 communities. Not one of them asked about the cost of
14 these efforts. They wanted a cleaner Bay, they wanted
15 more stringent pollution prevention and pollution
16 reduction actions. So I just wanted to throw that in.
17
18

19
20 Just a few more things, quickly. About risk reduction.
21 First of all, I want to thank the Regional Board Staff,
22 because they did include the language from the State
23 Board order in the TMDL on Page 24, as we had
24 requested. We think this is going to be very key in
25

1 protecting impacted communities, particularly
2 subsistence fishers over the decades ahead. I think
3 the San Francisco Bay Area Regional Board as well as
4 the State of California should be very proud that they
5 are taking a lead on looking at risk reduction in cases
6 where cleanup is going to take a long time. So I
7 congratulate you on that, and I appreciate that.
8
9

10
11 However, we would actually like to see this language
12 placed in each section for every discharger. It is
13 vague language, it is not telling dischargers they have
14 to go out and do medical screening or whatever risk
15 reduction develops into. But I think that it is fair
16 to say that dischargers have a responsibility regarding
17 this manner in supporting these efforts. Interestingly
18 enough, a number of dischargers have stepped forward
19 already, specifically BACWA and BASMAA. And they are
20 working with the Regional Board to act on risk
21 reduction, even before we have a TMDL instituted. We
22 have consistently praised that effort.
23
24
25

1 The people that are not at the table on this, who have
2 been missing in action on this, are the dischargers who
3 are not only private concerns, not living off the rate-
4 payers, but are the polluters, are the people that are
5 creating mercury pollution. We don't see waste water
6 treatment plants and storm water agencies as creating
7 pollution, they are managing pollution. And while they
8 have a discharger responsibility, I wonder where the
9 other dischargers are on this risk reduction
10 responsibility.
11
12
13
14

15 Consequently, we feel that if we put this in the
16 discharger section from the TMDL, that will be a more
17 fair message sending out that everyone needs to come
18 forward and support these efforts as they develop. And
19 there is a process that is happening, where that is
20 going on.
21
22
23

24 CHAIRMAN MULLER: I need you to conclude, please. We've
25 been more than --

1 MS. VENTURA: Okay. Then I'll make two very quick
2 comments. We appreciate the fact that Staff is moving
3 ahead on responding to the State Board Resolve 7, which
4 does call for prioritizing mines and -- identifying and
5 prioritizing mines. We would also say that that would
6 include stream beds and hot spots that drain into the
7 Bay.
8
9

10
11 What the problem is, is that it's not clear in the TMDL
12 what they're doing. It's not clear what's going to
13 happen in the future. And so we do wish that they
14 would add two or three sentences, kind of codifying the
15 actions that they are currently taking along those
16 lines in conjunction with the Central Valley.
17
18

19
20 And we also ask that they would make a simple change to
21 address the issue of air deposition, which is, in fact,
22 addressed in the State Board resolution. We do feel
23 that that is part of the remand response. And that
24 would -- we would consequently like to see language
25

1 added on Page 15 under Urban Runoff that says,
2 "Aggressively identify and regulate through permits and
3 the TMDL fixed sources within their watershed of
4 airborne mercury-laden particles and dust which may
5 enter runoff." A simple addition to the TMDL.
6

7
8 Last thing I will say, and then I will turn it over to
9 the next speaker, I'm not going to go into this now,
10 given time, but for the reasons that I talked about
11 offsets, these are the same reasons we actually do
12 believe that there should be enforceable individual
13 waste load allocations for each POTW and refinery and
14 any other kind of discharger. So I'll leave it at
15 that, but thank you for your attention.
16
17

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19
20 CHAIRMAN MULLER: Thank you. So we'll have Michelle,
21 Kevin and Alan lined up here for the three.
22

23
24 MS. PLA: Good afternoon, Chairman Muller and Regional
25 Board Members. My name is Michelle Pla, and I'm the

1 Executive Director of the Bay Area Clean Water
2 Agencies, representing the collection systems in the
3 Bay Area and the POTWs that make up the municipal waste
4 water category in this TMDL. I want to commend the
5 Staff for the hard work. I believe they have developed
6 a new TMDL that is in response and does respond to the
7 remand.
8

9
10
11 Before I go into that, though, I do want to respond
12 very briefly to the discussion earlier on ex parte, and
13 to let you know that we in BACWA also had the same
14 sense that we wanted to wait until after this hearing
15 when the discussion had come out, and all the issues
16 had been on the table before we had any particular
17 discussions with Board Members. We hope that you will
18 be available per your own feeling about that between
19 now and August.
20
21

22
23
24 But I also wanted to let you know that we did meet with
25 Baykeeper and Clean Water Action because we, too, did

1 not want to be surprised about their issues. And I'm
2 sure they were not surprised about ours. I think that
3 meeting was very helpful on both of our parts. We also
4 met with EPA, we were very pleased that Alexis Strauss
5 had her staff meet with us in conjunction with the
6 Regional Board staff, again, to make sure that we all
7 understand each other's issues in advance so there were
8 no surprises.
9
10

11
12 So although we did not meet directly with you, with any
13 of your Board Members, we did have some communications
14 outside of just our comment letters before the comment
15 letter was developed. And we hope that if you have any
16 questions about our position, please get in touch with
17 me directly, and I'd be happy to talk with you and come
18 meet with you and go over it.
19
20

21
22 I have five major comments that I want to make this
23 afternoon regarding this proposed remand. And our
24 comments are really intended to be -- to help improve
25

1 this so that when it does go to the State Board that it
2 can be adopted. Specifically, we are concerned about
3 the Water Quality Objectives for fish tissue. We
4 believe that perhaps what has happened here is that the
5 Staff has gone a little bit beyond what was required by
6 the remand, and has introduced some unnecessary
7 conservatism, which is proposing a greater level of
8 protection for the San Francisco Bay than we see in
9 other water bodies in California, and any other water
10 bodies in the country.
11
12

13
14
15 And in order for them to back that up, we do think that
16 they need to do a little bit more on their CEQA work,
17 and a little bit more on their water quality analysis.
18 We don't think that there's enough there to back those
19 things up.
20
21

22 Our second issue that I want to talk about is about the
23 waste load allocations. These are very dramatic
24 reductions for a very small amount of discharge which
25

1 has been noted. In fact, the municipal waste water
2 discharge is about 1.1 percent, 1.2 percent, definitely
3 less than 1.5 percent. We do appreciate that in
4 requiring this dramatic reduction, that the focus has
5 been in the first 10 years on pollution prevention and
6 any upgrade that we've already planned on doing. And we
7 do very much appreciate that advanced facilities and
8 small or really well-performing facilities that have
9 very low mass discharges right now would not be
10 required to go to the 40 percent reduction level. We
11 think that only makes sense, and you really cannot
12 squeeze blood from a stone.

16
17 The group allocation issue has been discussed a lot
18 this morning, and BACWA and BACWA's members have had
19 quite a lot of discussions about this, and you did hear
20 Mr. Kelly's comments earlier. We definitely believe
21 that this watershed approach is what's going to enable
22 us to move forward with an offset program. And the
23 watershed approach is what's going to be allowing us,
24
25

1 the group allocation is what's going to allow us to
2 move forward to look for better ways to realize water
3 quality benefits for the San Francisco Bay.
4

5
6 And it also sets up the individual allocation so that
7 each individual agency and POTW knows what is required
8 of them, and can meet those lower levels. And if they
9 can't and that aggregate is not met, then there will be
10 enforcement and we fully anticipate that.
11

12
13 I think I heard this question that perhaps these
14 individual waste load allocations should be in
15 individual permits and be fully enforced without the
16 group allocation. And my concern about that is that
17 will take away any desire to work on the watershed as a
18 whole, and it will also put into play immediately
19 mandatory minimum penalties. It is not a pilot, it
20 becomes clearly a very serious game.
21
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23
24
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1 So our feeling is that the group allocation produces a
2 huge incentive for us to work on this watershed, and to
3 work on other sources and look for other ways --
4 economic, reasonable ways to realize results for the
5 watershed.
6

7
8 My next issue is the issue of pollution offsets. And I
9 do want to mention here again that there's been a lot
10 of discussion about that. The remand talks about the
11 State Board being in charge of developing a policy on
12 that so that we are all sort of acting a little bit on
13 faith that that's going to be developed over the next
14 10 years, so that we know how to proceed.
15
16

17
18 BACWA member agencies definitely believe that to meet
19 that 40 percent waste load allocation we will need a
20 statewide offset policy. And we are recommending that
21 the TMDL specifically recognize that meeting that 40
22 percent will be contingent on the development of a
23 statewide policy that is implementable and equitable,
24
25

1 and that will in fact result in improvements for the
2 San Francisco Bay.

3
4
5 I've heard everything that Andria Ventura said before.
6 We've talked often about this, and I don't disagree
7 with her concerns at all, or with the concerns that
8 were raised by Member Wolff. Definitely, we would not
9 -- an offset policy, I can't imagine would be adopted
10 allowing some local impact to be occurring and then you
11 could still offset. I don't think that's ever going to
12 happen, and we don't anticipate that.
13
14

15
16 But the idea here is that the policy, as you saw in the
17 remand language, is not meant to leverage public
18 agencies, but rather to allow us to look for economic
19 ways to produce results for the San Francisco Bay. I
20 heard Andria state that her feeling was that an offset
21 shouldn't be allowed unless all treatment had been put
22 into place, and that if that's the case then there's no
23 incentive for an offset.
24
25

1 The whole idea here is to not have the Bay Area public
2 investing tens of millions of dollars every year in
3 advanced treatment without any results for the San
4 Francisco Bay. and so that's why we feel that that
5 policy is critical.
6

7
8 CHAIRMAN MULLER: I need you to conclude.
9

10
11 MS. PLA: Risk reduction. We are concerned about the
12 language there, because, again, we have read the remand
13 and we understand the language in the remand. We do
14 not believe that the State Board has the ability in the
15 remand to require public agencies, public waste water
16 agencies to finance, develop or deliver public health
17 programs to people who have had some impact from
18 mercury. And so we really hope that that -- in our
19 written comments we have recommended some changes to
20 that last bullet. And we believe that the state not
21 only doesn't have the authority to do that, but we
22 don't believe that was their intention. Because there
23
24
25

1 is language in there about consistent with their
2 regulatory authority.

3
4
5 So we will be participating in risk reduction, but we
6 don't anticipate that our permits are going to require
7 us to finance, develop or produce public health
8 programs for individuals who are showing any impact
9 from mercury. And I think that's it.
10

11
12 CHAIRMAN MULLER: Thank you.

13
14
15 MS. PLA: Thank you very much.

16
17 CHAIRMAN MULLER: We're going to have Kevin and Alan and
18 David Williams, please, if he's still here.
19

20
21 MR. BUCHAN: Good afternoon, my name is Kevin Buchan.
22 I'm with the Western States Petroleum Association. And
23 this has been a long day. I can imagine you guys are
24 tired, because I am. So I'm going to be really brief.
25

1 The State Water Board is going to handle this offset
2 policy, they've already committed to doing it. I don't
3 really see any value in changing the TMDL to
4 incorporate that here. We think you guys should move
5 this TMDL forward. This thing has been delayed for two
6 years. In September it will have been two years since
7 this thing was first adopted by this board. And at
8 that time we felt it was very scientifically sound and
9 legally defensible.
10
11

12
13 Now, here we are two years later and we're trying to
14 polish the chrome a little bit more. It kind of
15 reminds me, it's kind of like your Staff has gone out
16 and they've built a \$25 million Gulfstream Lear jet,
17 and it comes off the assembly line brand new, and we're
18 complaining that there's not enough Armor-All in the
19 tires. It's like, you know, we need this TMDL to go
20 forward. There are a lot of TMDLs that the State Water
21 Board has got to adopt, and that includes the TMDLs at
22 this Board.
23
24
25

1 We support Staff in the direction they're going, we'd
2 like to see you guys move this to an adoption hearing
3 and adopt this TMDL and let's get on with other
4 business. And that's all I have. Thank you.
5

6
7 CHAIRMAN MULLER: Thank you, Kevin.
8

9
10 MS. JOHNCK: Right on. I have a few more words. Ellen
11 Johnck, Executive Director of the Bay Planning
12 Coalition. And I'm here today to represent the
13 interests of the maritime community and the teeny bar
14 way down at the bottom of the screen that says 'dredger
15 category.'
16

17
18 You have done -- wow, this Board and your Staff have
19 done a fantastic job on this, the first TMDL as Kevin
20 said. But this revision, it's amazing what you've been
21 able to accomplish under the conditions. So I just
22 want to say that the maritime community is very
23
24 supportive of what you're doing here.
25

1 And, of course, we want to affirm -- it would come as
2 no surprise that the statement that dredging is
3 considered a net mercury loss as long as, of course, as
4 we abide by the LTMS and we're very much working with
5 that, as we have for the last 15 years and continue to
6 make great strides there.
7

8
9
10 I do just want to make a couple of points regarding
11 Appendix A for the record. And these do not require
12 any further response today, you've done enough today.
13 But at some point in the future, just want to have some
14 more discussions on these topics. This is the
15 suspended -- we're noting that the suspended sediment
16 target concentration of .2 parts per million is
17 retained. We don't see this as an issue, unless it
18 starts to be applied or applicable to our upland
19 disposal projects.
20
21

22
23 We just need a little clarification and discussion
24 about whether it will be applied to project-specific
25

1 WDRs for upland disposal that require decanting. The
2 issue is decant water from an upland placement project
3 with moderate bulk sediment, mercury levels somewhere
4 that tend to go between .2 parts per million to maybe
5 as high as .5 parts per million.
6

7
8 These would likely contain finer grained sediments that
9 would be expected to have a little higher mercury
10 concentrations than the bulk concentrations, and
11 therefore exceed the .2 target. I don't really think
12 there is an intent to regulate point discharges of
13 suspended sediments, but we will have to have a little
14 more concentration on that.
15
16

17
18 The other point that I want to make about the mercury
19 in sediments that are proposed for in-Bay disposal, and
20 the requirement that they be below ambient Bay
21 concentrations, which will be based on the ten previous
22 years of regional monitoring program data. As of now,
23 this threshold used by the DMMO, this will, of course
24
25

1 mean that the DMMO will have to apply greater scrutiny
2 to in-Bay projects, but this is a moving target. So
3 we're going to do a little more analysis to see how
4 this is likely -- how these last 10 years of RMP data
5 would likely affect our in-Bay disposal projects.
6

7
8 And then, just finally, on the point on Page 18, where
9 we talk about additional requirements of studies, we
10 will want to have more discussion on that. You know,
11 the dredgers support about 10 -- not 10, 17 percent of
12 the \$3 million budget for the RMP, and also through our
13 LTMS Environmental Windows Project. I have a number of
14 substantial funds that are coming in to the study of
15 methyl mercury in particular. So I just wanted to note
16 that, and of course we'll be interested in doing
17 studies, but want to know who's doing what and what the
18 parameters of those are.
19
20
21

22
23 In the meantime, right on. Get on with approving this
24 good work. Thank you.
25

1 CHAIRMAN MULLER: Thank you. I think I'm going to start
2 a new policy of 12 to 12:30, we're going to lunch from
3 now on.
4

5
6 MR. WILLIAMS: Well, it's a long day for everybody.
7

8 CHAIRMAN MULLER: Thank you.
9

10
11 MR. WILLIAMS: Chairman Muller, Members of the Board,
12 my name is Dave Williams. I'm the Director of Waste
13 Water at the East Bay Municipal Utility District, at
14 375 11th Street, here in downtown Oakland. I first
15 wanted to thank the Staff for some of the excellent
16 work and hard work in preparing this revised TMDL in
17 response to the remand.
18
19

20
21 I also want to support the comments that BACWA has
22 submitted and verbalized by Michelle Pla. But I'm here
23 specifically to address an issue that pertains to East
24 Bay MUD, and this is with respect to recycled water.
25

1 East Bay MUD has an ambitious recycled water program.
2 Our goal is to have 14 million gallons per day of
3 recycled water facilities online by 2020. We're well
4 on our way to doing that. Several of these are joint
5 projects within our overall water service area, with
6 other waste water providers. In fact, Dr. Wolff
7 attended a ribbon-cutting ceremony a couple weeks ago
8 for our joint project with the Dublin/San Ramon
9 Services District.
10
11

12
13 The issue is that some of these projects that we've
14 identified to get to this long-term goal of 14 are
15 irrigation projects, and some are used for industry.
16 And, of course, the State Water Code supports both of
17 those types of recycled projects. With industry,
18 unlike with irrigation where it's applied to mostly
19 turf, in the industry we use it for cooling tower --
20 recycled water for cooling towers and for boiler feed
21 water -- requires a high degree of treatment. But then
22
23
24
25

1 there's our reject stream, such as boiler blow-down and
2 the brine stream from our reject process.

3
4
5 Oftentimes, you're getting the water from a municipal
6 secondary treatment plant. East Bay MUD treats it, it
7 is used for industrial purposes and it's discharged.

8
9 Some of our projects will have this discharged through
10 the industry's own permitted outfall. So what I'm
11 asking is that the TMDL, the Basin Plan Amendment have
12 specific provisions that allow for the waste load
13 allocation to be transferred from the POTW, where the
14 source water is being obtained to ultimately the NPDES
15 permit holder that would discharge some of these side
16 streams like the blow-down from the cooling towers.

17
18 So that's my request. I'd like to see that
19 specifically addressed in the TMDL, the ability to do
20 that. Thank you.

21
22
23 CHAIRMAN MULLER: Thank you. Sejal, would you like to
24 go, please?
25

1 MS. CHOKSI: Good afternoon, Chairman Muller, Board
2 Members. Sejal Choksi, San Francisco Baykeeper. I
3 just have to make a quick comment. I'm just really,
4 really pleased at all the questions and discussions
5 going on by the Board Members, that the level of
6 understanding and sophistication on this topic has just
7 risen through the roof. And many of the issues that
8 were raised were actually challenges that Baykeeper
9 originally had to this TMDL, so Mr. Eliahu, Ms. Bruce
10 and Ms. Warren, I would really appreciate talking to
11 you guys about your questions that you've raised, and
12 anybody else who has any questions.

16
17 So, getting into the substance. I would first like to
18 give a hearty congratulations to both Dyan Whyte and
19 Carrie Austin. I think that they have done a
20 tremendous job responding to the remand order. And I
21 believe that -- as you can see from the letter --
22 Baykeeper supports many of the amendments that have
23 been made. There are a few things that we would like to
24
25

1 see. A couple of them we believe are necessary to
2 respond to the order fully. And I'm going to talk
3 about some of them, the most important ones, today.
4 You have our 10-page letter and our one-page summary.
5 So hopefully you'll get the gist of the rest of what we
6 would like to see.
7

8
9
10 But, first, as we've kind of talked about today, we
11 believe the State Board remand order requires this TMDL
12 to have enforceable individual permit limits. I didn't
13 quite understand Dr. Mumley's explanation or response
14 to this issue earlier, but from a logical and legal
15 perspective, if a discharger like Chevron is violating
16 their individual mercury in their permit, the Board has
17 an obligation to enforce that limit.
18
19

20
21 It would be just a terrible policy and just an awful
22 precedent for you to say that you are not going to
23 enforce their limit if they're violating mercury
24 levels. So it makes me really uncomfortable to hear
25

1 Dr. Mumley say, 'well, the language is going to be in
2 the permit, so don't worry about it.' I can't -- I
3 have no idea what that will look like, I don't know
4 what that means. This is new territory, and I think in
5 order to be really responsive to the remand order, we
6 should just make the permit limits be individual
7 limits, enforceable. And that would be a change on Page
8 18 and 19, and deletion of a sentence.
9
10

11
12 Second, I actually, shockingly, agree with Kevin Buchan
13 of WSPA. The State Board is going to handle the state
14 offset policy, and I don't think we need to get into
15 the details of it today. We're going to be hashing
16 that out for years, it seems.
17
18

19
20 But there is a sentence that's newly-added in the Basin
21 Plan Amendment that essentially lets waste water
22 dischargers off the hook for making real reduction in
23 their loads, as Staff is trying to envision over the
24 next 10 and 20 years. The shield creates a
25

1 disincentive for the dischargers to implement
2 meaningful pollution prevention practices now. And it
3 also creates the wrong incentive for them to not
4 cooperate with creating the state's offset policy.
5

6
7 So I would just like to say, chronologically speaking,
8 the Board always, always has the option of revising
9 allocations in the future. That's just something that
10 you are allowed to do, you have the discretion to do
11 that. There's no reason to put that option exclusively
12 into the TMDL right now, because it creates this
13 disincentive. And so we would like that one sentence
14 on Page 25 to be deleted, because you always have that
15 option, and why call this one particular one out right
16 here when it actually creates a disincentive to comply
17 and try to, you know, make some really meaningful
18 reductions.
19
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21
22

23 Third, the Basin Plan Amendment still does not hold
24 refineries accountable publicly for the mercury they
25

1 bring into the Bay Area. And we believe the remand
2 order does address this issue and does require it.

3 With all due respect, Dr. Mumley's presentation was not
4 actually responsive on the concern, the very specific
5 concern that Baykeeper has.
6

7
8 Our issue is not with mercury in air emissions. We
9 believe the 13267 letter you guys issued does address
10 that question. This is not the same as the mercury in
11 crude oil. Your Staff estimated last year that the
12 mercury in crude oil is about 380 kilograms. That's a
13 significant amount of mercury. But for some reason,
14 Staff has been reluctant to ask refineries to actually
15 confirm that that number is actually correct. It's
16 just an estimate.
17
18
19
20

21 So we're simply asking you to add one question to the
22 refinery section that says tell us, the Board, how much
23 mercury is in crude oil from each refinery. And it
24
25

1 seems like a really simple and straightforward question
2 to ask.

3
4
5 Fourth, and finally, I support Dr. Wolff's
6 recommendation to remove the storm water shield
7 language that we saw in the Pesticides TMDL. If the
8 sentence is inconsequential, it's not inconsequential
9 to Baykeeper, so we would really like to see that
10 sentence removed here.
11

12
13 To conclude, I strongly urge you to ask your Staff to
14 make these four changes. We believe they're very easy
15 to make, and can be done very quickly before the next
16 hearing, at which I hope we can support adoption of the
17 TMDL. Thank you.
18
19

20
21 CHAIRMAN MULLER: Thank you, Sejal. I think I responded
22 to some of the comments. Khalil will be next, and then
23 Robert, and then we have one or two more to go.
24
25

1 MR. ABU-SABA: Good afternoon, Board Member Muller,
2 Members of the Board. Dr. Khalil Abu-Saba, Quicksilver
3 Solutions. Anybody who knows how to fill out a
4 Schedule C can start their own consulting firm. I'm
5 not here on behalf of anybody. As was mentioned, I
6 helped launch the first phase of this five years ago.
7 And I'm here to make three very brief policy process
8 comments, and then there are a couple questions that
9 came up from Board Members regarding offsets and
10 wetlands that I'll quickly speak to.
11
12
13
14

15 It warms my heart to see all the usual sinners in the
16 rear pews today. I appreciated Dr. Mumley's roll-
17 calling, and I would add to that before Lila Tang and I
18 picked up the first draft of the Mercury TMDL, the work
19 initiated by Toby Tyler and Ken Taylor was
20 foundational. Which means it's been about 10 years and
21 5,000 pages of administrative record. And the number
22 of current and former staff that have worked on this
23
24
25

1 outnumber the number of Board Members. In fact, pretty
2 soon, we'll be able to field a soccer team.

3
4
5 So, really briefly, I would say go ahead and adopt the
6 TMDL, it's good to go. And don't change a word of it,
7 it's fine. Rule number one is that Staff were right,
8 and rule number two is if Staff aren't right, find a
9 way to make rule number one apply.
10

11
12 I also encourage you to be proud of the process that's
13 led us up to where we are today. And while this is
14 directed to the Board and the Chair, I very much want
15 everybody else in the room to hear. You need to stop
16 pretending and posturing that the remand is some kind
17 of mark of shame or some huge victory, or some crashing
18 loss for one side or the other. The remand is just a
19 sign that we're talking about things, and to me, that
20 says the system is working.
21
22
23
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1 You know, Board Member Eliahu and I come from a region
2 of the world where people don't talk so well. And so I
3 really encourage you to take a look at that, and
4 recognize that the system is working. And I do agree
5 with Sejal Choksi that the level of sophistication and
6 technical savvy that has come out in these discussions
7 has just gone up by orders of magnitude. So everybody
8 take a bow.
9
10
11

12 And the other thing to be proud of is that in the
13 process of all these discussions, things are happening.
14 And I wish that, you know, you would recognize and
15 articulate that a little bit more clearly. In the five
16 years during this process of developing the TMDL and
17 hitting it up to Sacramento and hitting it back, you
18 know, you mentioned the Guadalupe River as a
19 significant source but failed to capture that, oh,
20 well, you've been enforcing the Guadalupe River at New
21 Almaden.
22
23
24
25

1 You know, in 1994 to '96 there was a settlement that
2 initiated a cleanup of New Almaden mine site, and
3 turned it into a county park. And a year ago there was
4 a settlement of the Natural Resources Damage Assessment
5 that provided a multi-million dollar resources for
6 downstream management of mercury loads. And I never
7 hear that, but you really need to recognize you are
8 implementing load reductions today.
9
10

11
12 And this year, in April of this year, I attended a
13 committee meeting, subcommittee meeting with the
14 Regional Monitoring Program sources, Pathways and
15 Loadings work group. This is a committee I initiated,
16 geez, 10 years ago now. One of the things that we saw,
17 looking at the monitoring data from the lower Guadalupe
18 River is that it appears that over the past five years
19 the mercury to TSS ratio has dropped.
20
21

22
23 All the scientists in the room picked that out. And we
24 also said, "Wait a minute, we need to monitor five
25

1 years, 10 years more before we can really be sure about
2 that." But it really looks like things are happening in
3 the watershed. That we know. They are doing projects
4 to remove mercury, you know, mercury-laden sediments.
5 And it looks like they're working, and you need to take
6 some credit for that.
7

8
9
10 And that really brings me to my third, you know, kind
11 of policy process. Which is that we need to really
12 walk the talk. All this Staff effort, all of these,
13 you know, years of planning, your 5,000-page
14 administrative record will amount to 5,000 pieces of
15 paper until you actually implement projects and then
16 report back 'here's what we did, and here's what we got
17 for it.'
18

19
20
21 Now, some of that is happening, but I will really
22 believe it when I see it. And I think this goes very
23 much to some of the questions about, you know, what's
24 going on in the Central Valley. Are we comfortable
25

1 sort of deferring to the Central Valley TMDL and
2 saying, 'well, they're adopting a TMDL.' It kind of
3 depends on what they do. You know, show me the mine
4 sites, show me the other projects. Everybody has
5 walked up on this TMDL with their own ideas for what's
6 a good implementation action. Methyl mercury studies,
7 treatment plants and mercury load reductions and
8 treatment plants, and air sources.
9
10

11
12 You know, when I walked up on this TMDL -- and I'm
13 guilty of this, too -- my imagination was captured by
14 the mine sites. And that's where I've put a lot of my
15 life's work. You know, I think we all have done a good
16 job at what we do well at. We need to just kind of
17 move forward, and that's where I really encourage you
18 to adopt this TMDL.
19
20

21
22 Board Member Wolff, I'm glad to hear that you're going
23 to Sacramento, and when you get there, take a hard look
24 at these plans that are coming out, and ask them hard
25

1 questions about what will they really do, what are the
2 mine sites they're going to be knocking over. Number
3 two, after New Almaden was New Idria. And two myths
4 about New Idria, one, there is no responsible party.
5 That has actually been put to rest. There is a
6 potential responsible party connected to a \$600 million
7 a year corporation, has come forward and started
8 talking to Water Board Staff as of fall last year. The
9 other myth was that the water doesn't go anywhere.
10
11

12
13 And on April 5th of this year, after that consistent
14 heavy rains we got, I went out and at the nexus between
15 the water body downstream at New Idria and the San
16 Joaquin River, I went ahead and just filmed flow
17 exiting and headed for the Central Valley. So, you
18 know, really, the planning is fine but it's time to get
19 on with walking the talk. So I will look forward to
20 kind of talking to you about that in Sacramento.
21
22
23
24
25

1 So those are my policy process comments. And I wanted
2 to just really briefly touch on two questions that came
3 up from the Board. One is -- and everybody's really
4 been thinking about this a little bit -- is what is an
5 offset and how does that look? I kind of like the idea
6 about calling it offsite credits, even if it just sort
7 of gets rid of a politically sensitive language.
8
9

10
11 I said this to you two years ago, and I'll repeat it.
12 You need to think about offsets like you think about
13 any plan or any permit you adopt. It's a CEQA process,
14 and that means that your duty is to avoid and minimize
15 and mitigate for pollution. You know, it's still and
16 always has been illegal to discharge pollution in the
17 state waters. That hasn't changed.
18
19

20
21 So what you're really doing when you adopt a plan,
22 you're saying, 'well, you know, of course waste water
23 treatment plants have to guarantee they're not
24 producing any localized effects.' And I need to tell
25

1 you that, you know, if there were actually evidence
2 right now on the table that waste water treatment
3 plants were causing harm, I would have Mr. Kelly's
4 coordinates tattooed on my right bicep, okay? The
5 fact, the concern, the reason to methyl mercury studies
6 is actually implementing a precautionary principle. By
7 all means, go forward and do them.
8
9

10
11 But, you know, we're already kind of approaching the
12 ascent, where we think we've pretty much done all we
13 can. Keep doing more, keep looking. I encourage you
14 to do that, but recognize once all that's done, there's
15 still going to be needs. Watershed load reductions,
16 risk reduction, these are going to require resources,
17 and that's really what -- where the offsite credits
18 come in. Societally, we're saying after you've done
19 everything you can, what else needs to be done, and
20 who's going to pay for it and why should they. And
21 that's where your challenge is.
22
23
24
25

1 The first round of the TMDL, they didn't put the
2 pressure on one particular -- on waste water treatment
3 plants. This round has and is now offering the offsets
4 as, you know, a way of moving forward with that. And
5 that was one of the foundational issues that led to the
6 remand, and when I saw Ms. Fleck out in the hall and on
7 break, I said two things. One, congratulations. And
8 two, let me know how that works out for you.

11
12 So you're not at the end of it yet, and you've very
13 clearly articulated some of the challenges. If you
14 don't put pressure, why should anybody do anything? If
15 you do put pressure, then why shouldn't they just
16 relieve the pressure rather than deal with the offsite
17 credit? So good luck with that.

20
21 And, finally, to conclude. Just some thoughts about
22 the -- Board Member Eliahu, I appreciate your questions
23 about the Westlands District and the I-5 Project.
24 Speaking more generally, the Westlands -- rather, the
25

1 San Joaquin River side of things -- the San Joaquin
2 River is interesting because it's such a low part of
3 the overall flow to the Delta. And yet, because of
4 when the flow goes up they start diverting from the
5 better water side, the Sacramento side. That actually
6 means that inputs of pollutant loads from the San
7 Joaquin River during a high flow period do become
8 significant. And you can see that in the sediments at
9 the mouth of the San Joaquin River.
10
11

12
13
14 When the flow goes off, when the relative proportion of
15 flow from the San Joaquin River goes off, the
16 concentration of mercury in bottom sediments at our RMP
17 station at the mouth of the San Joaquin River also goes
18 off. It's not just mercury and sediments. If you look
19 at the very first year of CAL-FED monitoring data and
20 the concentration of mercury in inland silversides
21 (phonetic), there's a bioaccumulation gradient that
22 points all the way up the San Joaquin River towards
23 Mudd Slough.
24
25

1 There's probably a number of complex reasons for that,
2 but as I said to the Central Valley Regional Water
3 Board November 28th of this year, you can't ignore the
4 second-largest producer of mercury in North America
5 that drains into the San Joaquin River. So with that,
6 I'll conclude. And Staff, if there's anything I can
7 ever do to help, click your heels three times and say,
8 "Quicksilver." I'll be there for you. See you in
9 Sacramento. Thanks.

10
11
12
13
14 CHAIRMAN MULLER: Thank you. Robert. And we're getting
15 down to the last --

16
17 MR. FALK: Jo, don't go. Because I want to say welcome
18 back. Now you can go. I'm Bob Falk, I'm counsel to
19 the Santa Clara Valley Urban Runoff and Pollution
20 Prevention Program, or otherwise known as the
21 municipalities that discharge storm water in the South
22 Bay. I forget why I'm standing up here, because I'm so
23
24
25

1 hungry I want to eat something, and I'm sure you all
2 feel that way.

3
4
5 Actually, I didn't plan to testify today. And I'm here
6 to address just one point, and that's the point that
7 Dr. Wolff raised first and Sejal raised last, which is
8 this business about striking out of the implementation
9 plan a sentence that essentially says that if municipal
10 storm water agencies comply with their NPDES permits,
11 they shall be deemed to be in compliance and not
12 actionable to citizen suits and being hauled into
13 federal court.
14
15

16
17 That's a principal that we -- a policy principal that
18 has undergone extensive discussion in this state over a
19 long period of time. And it is a reflection of that
20 policy, and I strongly disagree that that's
21 inconsequential or that it should be struck out of this
22 Implementation Plan. It is very, very important to the
23 municipal agencies to understand that if they get a
24
25

1 permit, and if they implement all the programs in the
2 permit that they're asked to implement -- they fund
3 them, they implement them, they report on them -- that
4 they're not going to be hauled off into court for the
5 water quality standards still not being met. It may be
6 very good cause to adjust their permit, to change the
7 requirements in there, to ask them to do more in the
8 coming years. But it's not a good reason to subject
9 them to enforcement action.
10
11

12
13 So I ask you, leave that language alone. I also agree
14 with Tom Mumley, it's not part of the remand, it's not
15 what's been public noticed, it would be procedurally
16 improper for you to deal with that issue.
17
18

19
20 Finally, let me say on that point that there's a
21 compact here. The municipalities have a lot of
22 concerns about this TMDL. They've expressed those in
23 the past years. They're concerned about it being based
24 on sediment, they're concerned about load reduction
25

1 that they're assigned, which is bigger than anyone
2 else's -- really going to do something in the Bay Area
3 is a sign. We're willing to put all that anxiety on
4 the side and say, "Okay, we're going to trust your
5 program, we're going to trust adaptive implementation,
6 we're going to work with you."
7

8
9
10 But to put that anxiety on the side and to satisfy city
11 council members and mayors that that's okay, having
12 this language and saying, "Look, once we have our
13 permit, as long as you let us do what's in our permit,
14 we're going to be okay here." That's very important.
15
16 So thank you very much.

17
18
19 CHAIRMAN MULLER: Thank you.

20
21 MR. WOLFF: Mr. Chairman?

22
23
24 CHAIRMAN MULLER: Yes, sir, Gary.
25

1 MR. WOLFF: May I just ask a quick follow-up question?

2
3
4 CHAIRMAN MULLER: Sure.

5
6 MR. WOLFF: You indicated that that sentence is --
7 implements a policy that's been adopted elsewhere. You
8 don't need to answer that for me today, where
9 elsewhere, but I'd like to see that in writing. I'd
10 like to know where that policy, that language you're
11 talking about has been implemented elsewhere.
12
13

14
15 MR. FALK: Yeah, the State Board --

16
17 MR. WOLFF: Not today, please. But if you could just
18 send it to me, or see that I get it through Staff.
19
20

21 MR. FALK: Okay.

22
23
24 MR. WOLFF: Thank you.
25

1 MR. FALK: I hope you agree it's a policy that makes
2 some sense.
3

4
5 CHAIRMAN MULLER: I found it, I found the last one here.
6 Peter McGaw.
7

8
9 MR. McGAW: Thank you. I'm Peter McGaw, and I'm here
10 today wearing the hat of the Partnership for Sound
11 Science and Environmental Policy. Craig Johns, the
12 Executive Director, was not available and asked me to
13 do my best to stand in on his behalf.
14

15
16 First of all, I don't see Larry in the audience, but
17 it's my understanding this is Larry Kolb's last
18 meeting, and I wanted to at least thank him. And since
19 he's not here, maybe someone can pass along --
20

21
22 CHAIRMAN MULLER: I think we're going to be recognizing
23 him --
24
25

1 MR. McGAW: That's great. Just note that I appreciate
2 all of his efforts over the years, particularly on this
3 issue. I wanted to address, just very quickly, the
4 question about mercury in crude oil that comes into the
5 refineries. That issue has been raised before, here,
6 in front of this Board. It was raised at the State
7 Board level before the remand. And I think if you read
8 the remand, what you will see is in fact the State
9 Board was supportive of the efforts that this Board has
10 taken so far in the findings. And they did not direct
11 this Board to do anything additional beyond what it has
12 already done with the 13267 letter. And the refineries
13 are participating in the air deposition study that is
14 going to provide this Board with additional information
15 on sources of mercury to the Bay, which, of course, is
16 the charge of this Board.
17
18
19
20

21
22 You may not be aware, but it's my understanding that
23 U.S. EPA and the American Petroleum Institute are
24 looking at the question of mercury and crude, and the
25

1 feasibility of sampling for that. And although the
2 results aren't all in, it's my understanding that it's
3 very difficult to get any grasp of -- I mean, any
4 stability in the sampling of crude oil, but the mercury
5 levels in crude oil can be highly variable, not just
6 dependent on the particular oil field that it comes
7 from, but even the well or even the time that the well
8 is pumped. And so trying to get a grab sample of
9 mercury and crude and trying to draw conclusions from
10 that appears to be very problematic.
11
12
13
14

15 I think the message for this Board is that there are
16 others working on that issue on a national basis, and
17 it certainly would not be appropriate for this Board to
18 try and reinvent the wheel as part of this particular
19 TMDL process. The Partnership for Sound Science
20 supported the last version of this TMDL, they support
21 this particular version. It is a science-based TMDL,
22 and I do support the comments of others saying that
23
24
25

1 it's time to get this thing up and running, and
2 implemented. Thank you very much.

3
4
5 CHAIRMAN MULLER: Thank you. It was said earlier about
6 the dials just need a little bit of adjusting. Well,
7 we've given over an hour of public testimony here. So
8 I know you have a lot of adjusting to do on those
9 dials. You're going to have some big levers to pull,
10 but we're off to a right start and we're going to get
11 this thing implemented, as a number of speakers have
12 said.
13

14
15
16 So we can wrap up. Any other comments or questions and
17 conclusions here? We'll be looking forward to,
18 hopefully --
19

20
21 MR. ELIAHU: Mr. Chair, I would like to say something.
22 I'm still bothered with this allocation, waste load
23 allocations. And I don't know how the rest of the
24 Board feels about it. I would like to take a vote and
25

1 see. I'm suggesting to cut the allocation from 18
2 kilogram to 16, and I would like to know what the rest
3 of the Board thinks about it.
4

5
6 MR. WOLFF: Could you clarify? You're proposing to
7 reduce -- to make the allocation --
8

9
10 MR. ELIAHU: Well, right now it's 18 kilogram coming to
11 the Bay. And the suggestion right now is to reduce it
12 to 12. And I'm suggesting to reduce it to 16, rather
13 than 12.
14

15
16 MR. WOLFF: Okay.
17

18
19 CHAIRMAN MULLER: Can we take an action like that,
20 that's not on --
21

22 MS. WON: You can give direction as to how you want to
23 TMDL to come back to you, when it comes back to you.
24 But this item has been agendized as a no-action item.
25

1 CHAIRMAN MULLER: Right. So, in other words, we can't
2 vote on it. So you're more than willing as a Board
3 Member, to go ahead and make that suggestion to the
4 Staff, if you'd like. Margaret, do you have some
5 political insight here?
6

7
8 MS. BRUCE: And I just have a question that might help
9 clarify -- two questions, actually, that might help
10 clarify what our options and opportunities are for
11 crafting these allocations. If the Guadalupe TMDL, the
12 Central Valley's various Mercury TMDLs successfully
13 reduce mercury beyond those two very high bars that we
14 saw in your earlier presentation, will that potentially
15 change the opportunities for changing allocations and
16 implementation schedules for POTW dischargers?
17
18
19

20
21 MR. MUMLEY: Yes.
22

23
24 MS. BRUCE: Okay.
25

1 MR. MUMLEY: As by design in our adaptive implementation
2 section.

3
4
5 MS. BRUCE: So then, there is a potential to address Mr.
6 Eliahu's concern about the perception of
7 disproportionate impact on the POTWs bearing a
8 disproportionate, as I said, a target on the front, a
9 target on the back kind of -- for greater effective
10 mercury load reduction in the Bay, and a little bit of
11 relief on those who are, at least now, appearing to
12 bear a disproportionate share of the impact and cost, I
13 don't want to imply that I think the POTWs should be
14 given a pass.
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18 But I'm thinking about this in terms of how much
19 loading there is, just coming into the Bay. I'm
20 thinking about, as we work through these over time, and
21 those larger bars are brought down, do we have some
22 intentional wiggle room built in?
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1 MR. WOLFE: I would say we definitely do. Remember,
2 we're talking about implementation in a 20-year period,
3 and that we have a section on adaptive implementation.
4 Because we recognize we're going to learn a lot through
5 this process. You heard Bob Falk representing, to a
6 certain degree, the urban runoff community, who
7 definitely has concerns about whether they're going to
8 be able to achieve the allocation we've specified here.
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12 But we're saying that, one, our implementation means
13 for many of these parties, especially the waste water
14 and storm water, is through the permit process. That's
15 five-year permit, we have an opportunity every five
16 years to come back and review what we have in the
17 permit. At the same time, that may even drive us to
18 come back to you with an amended TMDL.
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22 We recognize we need to address issues such as methyl
23 mercury, such as what really can be accomplished
24 through the Central Valley. And so we're going to be
25

1 driven to keep this current, keep this up to date. And
2 I think that's where we have the opportunity to look at
3 what have we learned.
4

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6 MS. BRUCE: Great. Thank you, that answers my question.
7

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9 MR. ELIAHU: Well, then, that's what we say in 20 years.
10 You don't meet your objection of using the bedload in
11 Central Valley, then you go back to the waste load and
12 reduce it to zero? What are you going to do, then?
13

14
15 MR. WOLFE: Well, I think we -- again, this is going to
16 be a challenge as to both better understand what's
17 coming through the Central Valley. As you heard, the
18 sediment now coming out of the Delta is, in many
19 respects, cleaner than what's already in the Bay. But
20 we don't have a good handle on all of the sediment
21 transport mechanisms. Can we monitor that in 10 years
22 from now, and see that that actually the framework is
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1 different than today. And that that may mean that we
2 look at different allocations.
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5 However, I think the main message we're trying to get
6 across is that there are actions that all parties, all
7 source categories should be taking, and can be taking
8 today that can start the implementation, that can move
9 forward with the implementation. And I think one of
10 the comments that you heard from the commentators was
11 relative, in fact, that especially in waste water
12 there's the recognition that many things they're doing
13 they should be doing, relative to pollution prevention.
14 Especially since this is going to have benefits for not
15 only mercury, but for other pollutants as we move
16 forward.
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21 And so, much like the last TMDLs we considered on Napa
22 and Sonoma, we want to make sure that actions here are
23 potentially going to be able to have some benefit on
24 other pollutants, and that we get that economy of
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1 scope. And so I think it's trying to make sure we're
2 pushing all parties to be responsive and making
3 progress on implementation, but recognize that we're
4 going to learn more as we go along, and we may have
5 opportunities to see where other source categories may
6 be able to do more, or can't do as much, and we need to
7 modify.
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11 CHAIRMAN MULLER: Okay.

12
13
14 MR. ELIAHU: Okay.

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16 CHAIRMAN MULLER: I think -- again, I apologize to
17 everybody about this lunch thing. It's not going to
18 happen again. It seems like our agendas are getting
19 heavier and heavier and heavier, and we just keep
20 thinking we can grind through these things. But we
21 definitely in Region 2 are earning our keep with
22 everyone.
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1 MR. WOLFE: Do I hear a request for a two-day meeting?

2 I don't think so.

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5 CHAIRMAN MULLER: I think if we could, quickly -- Gary,
6 did you have an oath of office that you could --

7
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9 MR. WOLFF: We have to adjourn the meeting for us to
10 handle that.

11
12 CHAIRMAN MULLER: Okay, is that correct, Yuri? We'll
13 adjourn the meeting and then we're going to swear in
14 Gary quickly, to go to his next assignment in life, and
15 make sure he doesn't forget the little people. So t
16 this time we'll adjourn the meeting. If you would like
17 to just stay for a moment, and then we will reconvene
18 the storm water subcommittee, who's been very patient
19 for two months. I don't think we'll ever do
20 subcommittee meetings again in the afternoon, it just
21 never clicks.

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25 [Whereupon, at 1:50 p.m., the meeting was adjourned.]

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