

October 30, 2006

Brock B. Bernstein, Ph.D.  
308 Raymond St.  
Ojai, CA 93023



Dear Mr. Bernstein:

**SUBJECT: Sediment Quality Objectives (SQO) Scoping Document**

Thank you for the opportunity to review the SQO scoping document dated August 17, 2006. Staff has completed its review of the document, and offers the following comments, which address the document itself as well as its consistency with the Delta Protection Act of 1992 and the Commission's adopted Land Use and Resource Management Plan for the Primary Zone of the Delta.

**SQO Scoping Document**

Section 2 serves as the basis for the language contained in Section 3 (the Preliminary Draft Plan), so the suggested changes articulated below to Section 2 would also apply to Section 3, to the extent that the language in Section 3 needs to be revised to reflect these comments:

In Section 2.2 (page 5), State Board staff recommends that the Board adopt "Alternative 3", which calls for "development of SQOs and an implementation policy for bays, then estuaries in a phased approach ... providing the State Board with the time needed to collect data and develop appropriate tools and thresholds for estuarine habitats ...". In the absence of a State funding source to finance the collection of the information the Board is seeking to gather, the financial burden for these studies would fall solely upon those who live, work, and play in the Delta. Therefore, the Commission supports Board adoption of "Alternative 2" instead – focusing on "development of SQOs for those bays where enough data has been collected to support the development of appropriate tools and thresholds only."

In Section 2.5 (starting on page 6), there's a detailed discussion of how SQOs would apply to dredged sediments, with staff recommending on page 9 that the Board adopt "Alternative 3", which calls for "SQOs applying under specific conditions specified in Section 13396". The Commission is actively involved in development of a Long-Term Management Strategy (LTMS) for dredging and beneficial reuse of dredged materials in the Delta, similar to that successfully established in San Francisco Bay. The language in this section should refer to this "Delta LTMS" process (referred to in the Commission's comment letter to State Board staff dated October 6, 2006, attached for your information), and SQOs should ultimately apply under the conditions developed under the Delta LTMS.

Section 2.19 (starting on page 30) discusses what interim tools may be applied to the Delta and other estuaries, in the absence of the Mean Lines of Evidence (MLOE) that would be utilized in bays and areas where such information is available. State Board staff recommends on page 32 that the Board adopt "Alternative 3", which proposes use of "sediment toxicity and chemistry to implement the narrative objective, with additional development and evaluation required before a detailed approach is proposed." State Board staff also notes that the Scientific Steering Committee was critical of this approach. The Commission supports "Alternative 1", which states "Do not propose any tools for implementing the narrative SQOs until data is collected in Phase II, and the technical team has the time to develop appropriate tools." As stated earlier in the letter, if the State Board and/or Regional Boards establish a fund where such information can be collected and interpreted along MLOE, as is proposed elsewhere in the State, a scientifically defensible tool can be developed for the Delta in the future. In the interim, Commission staff discourages inclusion of language in the Basin Plan for the Delta referring to "interim tools" in the Delta, as the burden of proof would be on Delta interests to have such language changed in the future. *Note:* Even the language in Section 2.20 (page 32) referring to a sunset date for "interim tools" in the SQO plan does not address this concern, as State Board staff acknowledges that the planning and funding associated with changing that language after the sunset date is uncertain.

#### Consistency with the Delta Protection Act of 1992 and the Commission's adopted Land Use and Resource Management Plan for the Primary Zone of the Delta

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Land Use and Resource Management Plan for the Primary Zone (Management Plan) was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs. As mandated by the Act, the policies of the Management Plan are incorporated in the General Plans of local entities having jurisdiction within the Primary Zone. Both the Act and the Management Plan are available for your reference at the Commission's website, [www.delta.ca.gov](http://www.delta.ca.gov).

The policies and recommendations from the Management Plan that are relevant to this process include, but are not limited to, the following:

##### Utilities and Infrastructure

- Recommendation 3: The existing commercial shipping channels should be maintained, and if determined to be environmentally and economically appropriate, deepened to meet modern shipping needs. Material excavated from the shipping channels should, if feasible, be used for maintenance of Delta levees or for wildlife habitat enhancement within the Delta and for other uses within the Delta.

Recommendation 4: Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta.

Land Use

- Recommendation 4: Because of the need to continually dredge the channels serving the two ports, it is essential to maintain spoil sites and not allow existing spoil sites to be converted to industrial or other uses which preclude or limit their use as spoil sites.

Water

Recommendation 4: Programs to regulate [agricultural drainage] in the Delta should be accompanied with education programs, be implemented over time, and should, where needed, provide financial assistance such as grants and interest-free loans to ensure compliance.

Conclusion

At the October 2, 2006 meeting of the SQO Advisory Committee, there was some discussion about the uniqueness of the Delta and the difficulty of implementing the proposed SQO program in the area. Specifically, it was noted that the proposed SQO program, as currently drafted, is not a good "fit" for the Delta, mostly due to data gaps relating back to MLOE, and because sediment testing or cleanup actions would not be required from the upstream areas that are a significant source of the Delta's sediments.

Please note, the Central Valley Regional Water Quality Control Board is in the process of formulating a Methylmercury TMDL program for the Delta, which, as currently drafted, would place the cost and burden of methylmercury characterization studies on Delta landowners and managers. The SQO scoping document basically adopts the same approach, requiring Delta residents and land managers to conduct costly studies to characterize sediments in the Delta. Therefore, it is imperative that Recommendation 4 from the Water section of the Management Plan be taken into consideration, and that the State Board consider establishing a sediment monitoring and cleanup fund, as well as an ample timeframe, for effective implementation of its proposed SQO program in the Delta.

Thank you for the opportunity to review and comment on this proposed program. Commission staff will continue to be involved in the SQO program development process. Please contact me at (916) 776-2292 or [lindadpc@citlink.net](mailto:lindadpc@citlink.net) if you have any questions about the Commission or the comments provided herein.

Sincerely,

Linda Fiack  
Executive Director

cc: Chris Beegan, State Water Resources Control Board