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TAKING THE WASTE OUT OF WATER
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February 17, 2017

Chair Felicia Marcus & Members
State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814

via email to: commentletters@waterboards.ca.gov
Subject Line: "Comment Letter -- Beneficial Uses and Mercury Objectives"

Re: ***Draft Staff Report, Including Substitute Environmental Documentation for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions*** **(Statewide Mercury Proposal)**

Dear Members of the Board:

Sacramento Regional County Sanitation District (Regional San) appreciates the opportunity to provide these comments on the Draft Staff Report, Including Substitute Environmental Documentation for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Statewide Mercury Proposal). Regional San provides municipal wastewater treatment services to more than 1.4 million people in the greater Sacramento Region. Our treatment facility is regulated by the Central Valley Regional Water Quality Control Board (Regional Board) *via* an NPDES permit that is renewed every five years and the Statewide Mercury Proposal will have specific (and potentially problematic) impacts on our facility.

We appreciate the importance and need to recognize the proposed beneficial uses related to tribal cultural and subsistence fishing. Our primary concerns relate to the processes and principles that will be used by Regional Boards in the designation and implementation of those uses. Our objectives are to ensure that meaningful reductions in levels of mercury in fish tissue can occur and that there are no costly unintended consequences to insignificant sources of mercury loadings that, in the end, will not yield the substantial reductions needed or the outcomes desired.

As you know, Regional San is in the midst of an expansive treatment facility upgrade to achieve NPDES permit limits adopted by the Regional Board in 2010. This Project, known as EchoWater, is currently under construction and has an estimated capital cost of $1.7 billion and a completion date of 2023.

The EchoWater project includes the following new treatment processes to be employed: biological nutrient removal, filtration, and new disinfection processes. Yet preliminary analysis of Regional San's ability to achieve compliance with some of the newly-proposed Water Quality Objectives (WQOs) for mercury indicates that the treatment technology *currently being constructed* may not be able to meet those proposed new WQOs.

Regional San has worked very closely with the Central Valley Clean Water Association (CVCWA) and California Association of Sanitation Agencies (CASA) in developing specific comments and suggested language changes to the Statewide Mercury Proposal, which were submitted under their letter dated February 17, 2017. Regional San hereby supports those comments – and the specific requested changes to Appendix A of the Draft Staff Report/SED (the Regulatory Language) and the proposed additions to include in the State Board's resolution to provide guidance to Regional Boards. We believe these changes provided by CVCWA and CASA will achieve the goal of the Water Boards to recognize and protect the proposed new beneficial uses for Tribal and Subsistence Fishing and Cultural Lifeways, without placing undue – potentially ***very costly*** – new treatment requirements on traditional point sources (like Regional San) who are routinely determined to be ***insignificant sources*** of ongoing mercury loading to waterbodies in California.

Regional San would like to specifically address "Issue L" (***"What procedure should be used to determine which municipal wastewater and industrial dischargers would need effluent limits?"***) contained in the Staff Report/SED. Issue L presents two approaches that would dictate whether and how Regional Boards would establish mercury WQOs for municipal wastewater and industrial dischargers. The State Board's staff recommendation ("Option 1") is to use a mercury water column concentration approach where WQOs are derived from calculating bioaccumulation factors (i.e., multipliers that relate fish tissue concentrations to mercury in the water column, also known as "BAFs") instead of relying on mercury concentrations in fish tissue. Our opposition to using water column concentrations for WQOs that are based on BAFs is that this approach is not well-supported by best available science, can be extraordinarily complex and variant for different waterbodies, will have potentially catastrophic impacts on point sources (who are typically a very small source of mercury and other priority toxic pollutants), and are not legally required under state or federal law. ***Regional San respectfully requests that the State Water Board select "Option 2", which would establish mercury WQOs based on fish tissue concentrations.***

At the February 7, 2017 State Water Board hearing on the Mercury Proposal, many commenters supported the creation of a collaborative stakeholder process that will allow ***all interested parties*** (including Tribes, dischargers, regulators, and representatives from the subsistence fishing and Environmental Justice NGO community) to provide input to State Board staff in developing appropriate guidance for use by Regional Boards in implementing the proposed mercury WQOs with the proposed new beneficial uses. Regional San ***strongly*** supports this approach as the best means of developing implementation guidance that accounts for varied points of views, but will have the best chance for success in terms of achieving the mercury loading reductions envisioned by the State Board. It is important that this process is robust, open, transparent and inclusive of all interested stakeholders. We would discourage the use of focused stakeholder meetings, as this isolates interested parties and limits the ability to have productive discussions and limits the ability to collaborate and develop innovative solutions.

During the development of the Central Valley Regional Water Board Methylmercury TMDL for the Delta, a collaborative stakeholder-based approach was employed that resulted in a final TMDL for the Delta that was ultimately supported by stakeholders and that is now being successfully implemented, and is anticipated to achieve ***real*** mercury loading reductions for the Delta. We believe the lessons learned there could be applied to the Statewide Mercury Proposal and the process going forward.

Regional San appreciates the willingness of the State Water Board Members and staff to engage with stakeholders including CASA, CVCWA, and Regional San over the past several weeks, and we look forward to working with the Water Boards and other stakeholders in the near future in what we hope is a fair and realistic plan for implementation.

Sincerely,

Terrie L. Mitchell, Manager
Legislative and Regulatory Affairs

cc: Prabhakar Somavarapu, Regional San District Engineer
Christoph Dobson, Regional San Director of Policy & Planning
Lysa Voight, Senior Engineer, Regional San Legislative & Regulatory Affairs