March 29, 2012

Jeanine Townsend. Clerk to the Board
State Water Resources Control Board
1001 I Street 24th Floor
Sacramento, CA.
95814
commentletters@waterboards.ca.gov.

Re: "**Comment Letter - Statewide Mercury Policy – CEQA Scoping Comments.**"

Dear Ms. Townsend:

I am the Plumas County Supervisor for District 3, which includes Lake Almanor. Lake Almanor is a hydroelectric reservoir that was listed for mercury impairments in 2009. I am authorized by the Plumas County Board of Supervisors to represent Plumas County on this issue. The Plumas County Board of Supervisors recognizes that other reservoirs in Plumas County may be listed for mercury impairments as this program develops and Plumas County will continue to engage in the development of the proposed statewide Mercury Control Policy (Policy) and the statewide Reservoir Mercury Control Program (Program).

Plumas County supports Alternative 2 for Elements 1 and 2, as described in the State Water Resources Control Board's March, 2012 Summary for CEQA Scoping Meetings.

Mercury production and control in reservoirs is complex and Plumas County supports a statewide approach for integrating mercury reduction Policy and the mercury reservoir Program. A statewide approach offers the best opportunity for reducing total mercury and methylmercury given that effective control and reduction strategies will depend on specific reservoir characteristics such as size, elevation, stratification, coldwater fisheries habitat and population potentials, etc. The significant health and environmental risks from exposure to methylmercury in reservoirs warrant a comprehensive, consistent, and aggressive approach to mercury control and methylmercury exposure reduction. A statewide reservoir Program that is integrated with statewide Policy should accelerate reservoir mercury risk reduction faster and for more reservoirs. An integrated statewide Program and Policy should result in reduced exposure for sport and subsistence anglers and their families by applying promising prevention and remediation actions to the methylmercury dynamics in a specific reservoir. A wide variety of fish, amphibian, avian, and wildlife species are also exposed to methylmercury in reservoirs and may also need targeted risk reduction reservoir and fishery management actions for protecting their vulnerable life stages.

Therefore, Plumas County strongly supports the conservation and enhancement of coldwater fisheries in mercury contaminated reservoirs as an environmentally superior methylmercury exposure reduction strategy because of benefits to humans and wildlife. An integrated reservoir and coldwater and native fishery management approach, if implemented successfully, would significantly benefit many of the environmental values that make reservoirs popular for so many Californians. Of the range of proposed actions described in the CEQA Scoping Notice, coldwater fishery conservation and enhancement satisfies requirements under CEQA for the consideration of environmentally superior alternatives.

Reservoirs in California are valued assets for hydroelectric power production, water supply, flood control, recreation and other purposes. Reservoirs are affected by mercury in the watersheds that drain to them, and they can become sinks or sources for mercury contamination in downstream waterbodies. To the extent that the Water Board can design implementation actions that are appropriate for the mercury dynamics for "similar" reservoirs (such as thermally stratified mid-elevation reservoirs, for example), a statewide approach creates real opportunities for rapid dissemination and adoption of effective methylmercury risk reduction actions.

The *tiering and phasing criteria* that the Water Board will use for regulating 74 reservoirs in California will be an important undertaking that needs a high degree of transparency, public engagement, and scientific rigor. To ensure superior environmental performance while avoiding or mitigating potentially adverse environmental effects, Plumas County recommends that:

- The Program will be guided by a robust stakeholder, public, and science involvement process discussed in further detail below under "regional reservoir advisory committees" .
- The Water Board will commit to the early development of a CEQA checklist for reservoir owners and managers seeking Water Board permits for dredging and other activities within (and not just upstream of) mercury impaired reservoirs.
- The Mercury Control Policy will provide early and clear guidance on integration of this Program with the Water Board's other regulatory programs (including the tributary mercury TMDLs as they are developed and as they are being implemented).

Range of Project Actions and Alternatives:
The Water Board has described an adequate range of potential reduction actions and alternatives with two additional actions. The Program does not specifically propose testing waters below reservoirs, although such testing would be a significant indicator for the success of a particular reservoir's mercury control program. Secondly, the Program does not identify 401 certifications for FERC hydroelectric licenses, although 401 certifications for FERC regulated hydroelectric license renewals dictate water quality standards and compliance measures for reservoir and downstream river management for 30 to 50 years. FERC 401 certifications should be specifically identified in the "Fisheries Management in reservoirs" and "Water chemistry in reservoirs" Sources section and under "Potential Responsible Parties" for those sources as *"Parties seeking Clean Water Act Section 401 certification for FERC hydroelectric license renewals from the Water Board."*

Reasonably foreseeable means of Compliance including avoiding or mitigating negative impacts while achieving the best environmental outcomes:
It is difficult to respond to the CEQA checklist and to compare compliance approaches at the programmatic level except to say that Plumas County anticipates that Alternative 2 offers more environmental benefits than the No action Alternative1 and that compliance for optimal environmental and health outcomes should also avoid or mitigate negative environmental impacts and excessive Program compliance costs.

Achieving optimal environmental and health benefits through statewide assessment and regional implementation of "best available management practices" (BMPs) and "best available technologies" (BATs) requires investments in sharing "lessons learned" through annual reports and other means.

Negative environmental impacts from actions by "Responsible Parties" may occur as they comply with other Water Board programs and permits. All involved may waste time and resources because the Water Board's other permits and regulatory programs were not fully reconciled with this Program in the Mercury Control Policy. Compliance mechanisms, however they are designed, must operate to reduce risks for stranded assets, negative environmental impacts, and suboptimal environmental outcomes, by fully integrating permit-by-permit compliance with this Program.

Plumas recommends that compliance mechanisms for avoiding negative environmental impacts and to maximizing environmental benefits would include:

- The Water Board affirming the precautionary principle to do no harm as a central tenant of the Mercury Control Policy and the Mercury Reservoir Program. For the Program this commitment would include not permitting actions with a reasonable or foreseeable potential to increase methylmercury production and exposure in permits that are reviewed or issued by the Water Boards in advance of direct regulation under this Program. Permit "reopeners", although benefitting from more perfect hindsight may be ultimately less effective or more costly than precautionary foresight and a risk-adverse approach to permit issuance for mercury impaired reservoirs and their tributaries. Early development of a "mercury risk assessment checklist" for permits for impaired reservoirs is one way to ensure that the environmentally superior mercury reduction alternatives will not be foreclosed and that negative environmental effects will be avoided for permits issued or reviewed by the Water Board for mercury impaired reservoirs. The December 2009 Delta Methylmercury TMDL Control Studies Guidance Document, Attachment A, page 10, "Questions for New Projects" could be adapted for a mercury risk checklist.

- Another effective approach for avoiding negative environmental effects and for achieving superior environmental benefits is through coordination with regional advisory committees and through "meaningful consultation" with local, state and federal agencies, local governments, and with both "federally recognized" tribes and California recognized tribes.

Effective interagency, intergovernmental, and regional and statewide coordination:

Execute a MOA with California Department of Fish and Game (DFG), and with federal fish and wildlife agencies as necessary.

DFG has a long history with understanding and managing native game and nongame fish interactions and sustaining relationships between reservoir fish assemblages and the needs of reservoir-dependent wildlife, avian, and amphibian species. Fish stocking programs and reservoir-specific fishing regulations such as “catch and keep but don’t eat”, “catch and release” and “catch and keep and please eat’ need to be fully vetted with the fish and wildlife agencies and integrated with their reservoir fish and wildlife management goals- especially where state and federal species of special concern or threatened or endangered species are concerned.

Execute a MOA with California Department of Water Resources (DWR) Integrated Regional Water Management (IRWM) Program.

IRWM Plan updates now require identification of Disadvantaged Communities (DACs) and Tribes and the development and execution of outreach plans. Similar outreach strategies will need to be developed as part of this Program and for the proposed Tribal Fish Consumption Study under the Policy. Developing accurate subsistence fishing exposure rates to inform protective fishing practices and fishery management will benefit from coordination with regional IRWM programs. However, identifying subsistence fishers and local subsistence exposure rates for specific mercury impaired reservoirs through IRWM coordination does not relieve the Water Boards from obligations for direct, government to government consultation with California recognized tribes under the CEQA guidance protocols established by the Office of Planning and Research (OPR).

Execute a MOA with Tribes at the reservoir-regional level:
Government to government consultation with federally recognized tribes is only one part of tribal consultation law and policy in California. The California Heritage Commission maintains contact information for California recognized tribes. California tribes have a wealth of site specific and intergenerational knowledge on the ecology of reservoirs and their tributaries and water bodies downstream of mercury impaired reservoirs. California tribes also have specific information on traditional cultural uses of fish and wildlife in reservoirs, reservoir tributaries and downstream water bodies. Tribes are often reluctant to share their knowledge with others without a clear understanding about how such information will be used and without a clear commitment on the part of the lead agency, in this case the Water Board, to follow mutually agreeable protocols for incorporating tribal knowledge and for addressing tribal concerns into the Program.

Execute a MOA with the Department of Conservation (DOC) for integrated database development and for better identification of mercury sources to reservoirs
Finer -grained databases on mining activity in areas draining to mercury impaired reservoirs would be very helpful to potentially responsible parties and other stakeholders for identifying and prioritizing mercury cleanup sites and mercury and methylmercury reduction strategies. In the Upper Feather River (UFR) region, copper veins are often intertwined with gold veins. Although the primary purpose of the legacy mine was copper extraction, gold that was removed in the copper extraction process was probably associated with on-site or off-site mercury processing. There is also antidotal evidence of 1850-1950’s-era mercury stockpiles

along the old stage routes for gold processing in nearby steep canyons. Although these mercury sources may not appear on gold mining maps, they may have been located upstream from or beneath what is now a mercury-contaminated reservoir.

Invest in the development of Reservoir Advisory Committees RACs:
Consider formation and support of regional reservoir advisory committees (RACs) for individual reservoir clean up programs that include scientists and experts from tribal, agency, stakeholder, health provider, and non-governmental organizations (NGOs). As reservoirs from different regions are scheduled for regulation, develop consultation and adaptive learning mechanisms between the programmatic Mercury Control Policy TACs such as the Delta Methylmercury TMDL TAC and RAC regional members. RAC representatives can facilitate early collaboration among responsible parties and other stakeholders on exposure reduction studies with tribal and local health providers and with entities and individuals knowledgeable about or directly engaged with subsistence fishing in mercury impaired reservoirs and on tributaries to impaired reservoirs.

Collaborative Studies:
Collaborative studies should be encouraged through policy and other incentives, consistent with guidance on characterization and control studies in the Delta Methyl-Mercury Basin Plan Amendment (BPA). Early and volunteer collaboration among responsible parties and other stakeholders on characterization and control studies that support the development of reservoir management plans is key for developing locally appropriate reservoir control options. Collaborative Studies for reducing methyl-mercury concentrations in reservoir fisheries and reservoir tributary fisheries through the enhancement of coldwater fisheries should be prioritized and integrated across Water Board Programs and other California Resource Agency Programs.

Collaborative Pilot Projects:
Encourage and actively support reservoir-specific pilot projects by providing guidance on performance measures and monitoring protocols for collaborative and multi-benefit projects such as those identified in the scoping notice and bulleted below. Eligible Collaborative Pilot Projects could include:

- piloting and evaluating promising and locally appropriate methyl mercury reduction best management practices (BMPs). Prioritize coldwater fishery enhancement opportunities for reservoirs and their tributaries as early, “no regrets” implementation actions
- piloting and evaluating promising and locally appropriate technologies (BATs) for methyl mercury reduction such as reservoir aeration.
- piloting and evaluating coldwater fishery habitat enhancements for stratified and unstratified reservoirs of different sizes and located at different elevations and having or lacking tributary access for coldwater fish.
- applying and evaluating subsistence fishing data collection protocols for mercury impaired reservoirs.
- providing culturally appropriate education materials on local subsistence fishing survey results and on OEHA advisories to regional dental and medical health providers and to tribal health clinics.
- developing culturally appropriate “mercury wise” educational materials for subsistence fishers using mercury contaminated reservoirs.

- developing culturally appropriate “mercury wise” educational materials for landowners in watersheds with mercury contaminated reservoirs.
- assessing the infrastructure upgrade needs of individual, municipal, and community wastewater and stormwater operators for reducing mercury and nutrient inputs into mercury impaired reservoirs
- assessing the infrastructure upgrade needs for handling mercury waste from medical and dental providers in watersheds with mercury impaired reservoirs.
- assessing the infrastructure upgrade needs for handling mercury waste at landfills and at waste transfer, and waste recycling stations in watersheds with mercury impaired reservoirs.
- developing IRWM compliant metrics and performance measures for mercury reduction BMPs and BATs to incentivize implementation projects under regional and interregional IRWM and watershed programs.

Thank you for the opportunity to comment.

Sincerely,

Sharon (Sherrie) Thrall
Supervisor, District 3, County of Plumas