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George Day
California Regional Water Quality Control Board -
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
gday@waterboards.ca.gov

Re: Request for Hearing and Comments on Draft Storm Water Management Plan for Carnegie SVRA

Dear Mr. Day,

Pursuant to the notice posted on the Regional Board's web site and Section A.3.d of the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 and Waste Discharge Requirements (WDRs) for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (General Permit), California Sportfishing Protection Alliance ("CSPA") and Public Employees For Environmental Responsibility ("PEER") hereby request that the Regional Board hold a hearing on the Draft Storm Water Management Plan for the Carnegie State Vehicle SVRA. CSPA and PEER further request that the Regional Board staff consider the following comments and either deny or require changes to the SWMP consistent with the following.

I. Applying the Small MS4 Permit to Pollution Discharges From the Carnegie SVRA Does Not Address the Department of Park and Recreation's Duty to Comply With all Water Quality Objectives Under Water Code Sections 13247 and 13146.

The Department of Parks and Recreation, as a state department, has a duty under Porter-Cologne to comply with all state policies for water quality control and all water quality control plans. Unfortunately, the permitting mechanism proposed by staff and the Department of Parks and Recreation does not address the Department's clear statutory duties or otherwise require dischargers to comply with applicable water quality objectives. Even if the Regional Board allows DPR to use the Small MS4 Permit, the agency is still obligated – independent of that general permit – to comply with all applicable water quality objectives. Water Code § 13247 provides that:

> State offices, departments, and boards, in carrying out activities which may affect water quality, ***shall comply with water quality control plans approved or adopted by the state board*** unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

Water Code § 13247 (emphasis added). Similarly, Water Code § 13146 provides that:

> State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.

Water Code § 13146. The Department of Park and Recreation's pollution discharges from the Carnegie SVRA regularly and consistently violate the water quality objectives applicable to the surface waters of Corral Hollow Creek. The Central Valley Basin Plan establishes water quality objectives for all surface waters in the region. Basin Plan, p. III-2.00 ("The water quality objectives apply to all surface waters in the Sacramento and San Joaquin River Basins, including the Delta, or as noted"). *See* DPR, Corral Hollow Watershed Assessment, p. 8.

The Basin Plan adopts a turbidity objective for all surface waters. The turbidity objective prohibits increases in turbidity based on the natural turbidity levels in the relevant stream. The Basin Plan states that:

> Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:
> • Where natural turbidity is less than 1 Nephelometric Turbidity Unit (NTU), controllable factors shall not cause downstream turbidity to exceed 2
> • Where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU.
> • Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.
> • Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.
> • Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Basin Plan, p. III-9.00.

The State Board has designated all surface waters as available for use as domestic or municipal unless affirmatively dedesignated by the applicable regional board. *See* SWRCB Resolution No. 88-63 (Adoption of Policy Entitled "Sources of Drinking Water") ("All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards. . . ") (incorporated into the Central Valley Basin Plan as Attachment 8). The Basin Plan incorporates "Maximum Contaminant Levels" or "MCLs" as the applicable water quality objectives for waters designated for use as domestic or municipal supply (MUN). Basin Plan, p. III-2.00. The MCL for Aluminum is 1.0 mg/L. 22 CCR § 64431. The Basin Plan establishes a lead objective of 0.015 mg/L. In addition, EPA has promulgated water quality standards "for priority toxic pollutants in the State of California for inland surface waters. . . ." 40 C.F.R. § 131.38. The regulations include numeric water quality standards for copper, zinc and lead. The adopted freshwater numeric water quality standard for zinc is 0.120 mg/L (Criteria Maximum Concentration – "CMC" and Criteria Continuous Concentration – "CCC"); for copper is 0.009 mg/L (CCC) and 0.013 mg/L (CMC);

and for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule). Those numeric standards apply to "All inland waters of the United States" whether or not they are designated for municipal use. 40 C.F.R. § 131.38.

As described in the accompanying declaration prepared by Steven Bond, monitoring of Corral Hollow Creek where it flows past the SVRA demonstrates that the facility's operation results in discharges that exceed water quality objectives for turbidity, copper, aluminum, and lead. *See* Dec'l of Steven Bond. Mr. Bond made a total of seven visits to Carnegie SVRA. During each of Mr. Bond's visits to the SVRA on weekend days, when most activity at the SVRA occurs, he observed that "the water in Corral Hollow Creek was clear at the beginning of the park where it flows into the riding area and had turned cloudy and an opaque chocolate brown color as it passed through and exited the park." Bond Dec'l, ¶ 4. Mr. Bond collected water quality samples from Corral Hollow Creek during four of his visits to the SVRA. Mr. Bond measured turbidity upstream and downstream of the SVRA on three of his visits and took TSS samples on a fourth visit. As he states,

> The turbidity measurements I made at the "upstream" sampling location were unaffected by activities at the Carnegie SVRA and are reflective of background turbidity in Corral Hollow Creek. All of the upstream samples ranged from 0.47 to 2.5 NTUs of turbidity. Every single turbidity reading taken in Corral Hollow Creek at downstream locations or locations within the SVRA showed increases of roughly 50 NTUs on a low use weekday and up to increases of roughly 400 to 4800 NTUs on weekends. Each of the turbidity samples I took on 9 February 2008, 14 February 2008, and 2 March 2008 establishes a violation of the Regional Board's water quality standard for turbidity. I found that for this water body the approximate relationship between turbidity NTU's and total suspended solids ("TSS") as milligrams per liter ("mg/L") was 1.4 for values of TSS ranging from 100 mg/L to 4000 mg/L. . . . The relationship factor for TSS values less than 100 mg/L was 1.3. For TSS values less than 10 mg/L, the relationship factor was approximately 0.5. Consequently, turbidity values can be approximated based on the reported TSS concentrations. For the 8 March 2009 samples for which turbidity was not measured, but calculated on the basis of the above described ratio, the background turbidity is approximately 1 NTU and the downstream turbidity is approximately 4600 NTUs. This is an increase of approximately 4600 NTUs and clearly a violation of the Regional Board's water quality standard for turbidity.

Bond Dec'l, ¶ 6. Mr. Bond also measured zinc, copper, lead, aluminum and iron levels upstream and downstream of the SVRA. Mr. Bond's water samples showed exceedances of the Basin plan and CTR standards for each of those pollutants. *Id*., ¶¶ 5, 7.

In addition to Mr. Bond's analysis, the Department of Park and Recreation's own water quality assessment confirms that excessive quantities of pollutants are discharged from the SVRA to Corral Hollow Creek. Results from the Watershed Assessment's 2-year water quality monitoring program to categorize and measure the constituents that were present in Corral Hollow Creek and its tributaries indicate that pollutant concentrations increased, particularly for total suspended solids, as the creek flows past and through the section of the Carnegie SVRA where off-highway motor vehicle use occurs. *Id*. at 2. Two of the three water sampling stations that

exhibited higher pollutant concentrations than the other nine stations were from areas that drain active parts of the SVRA park. *Id*. at 164.

Despite these chronic and severe violations of objectives applicable to Corral Hollow Creek, the proposed application of the Small MS4 permit will do little to cure those violations because it does not require dischargers operating under that permit to comply with all applicable water quality objectives. *See* Small MS4 Permit, ¶ C (no requirement to comply with water quality objectives – only technology-based MEP). The proposed SWMP likewise avoids including compliance with water quality objectives as one of its stated goals. *See* SWMP, p. 56 ("Measurable Goals and Monitoring - Measurable goals will include an increase in vegetation cover, decreased signs of erosion (rills), a decrease in the number of yellow and red rated trails, a decrease in the annual sediment yield, an increase in drainage buffer areas, a decrease in turbidity within water courses and an evaluation of BMP effectiveness." As a result, the proposed permit and SWMP entirely fail to address the Department's duties under Water Code §§ 13247 and 13146 to comply with the State and Regional Boards' Basin Plan, including its numeric water quality objectives. The Regional Board, of course, cannot change those statutory provisions via a permit or otherwise.

II. The Regional Board Cannot Approve DPR's Proposed SWMP Unless the Board Deletes DPR's Self-Serving Assertions That Corral Hollow Creek is not a Tributary to the San Joaquin River.

DPR buries several poison pills within its SWMP where it asserts that Corral Hollow Creek is not a tributary to the San Joaquin River. SWMP, pp. 4, 11. The Department appears to be reinforcing an argument that Corral Hollow Creek is not a water of the United States. However, the permit under which the Department is seeking coverage only applies to discharges to waters of the United States. *See* Small MS4 Permit, pp. 2-3 ("This General Permit regulates discharges of storm water from "regulated Small MS4s." A "regulated Small MS4" is defined as a Small MS4 that discharges to a water of the United States (U.S.). . .").

In its SWMP, the Department asserts that "[t]he creek completely infiltrates within the western reaches of the San Joaquin Valley and has no surface connection to the San Joaquin River." SWMP, p. 4. *See also id.*, p. 11. No evidence supporting this assertion is cited. Based on CSPA's and PEER's previous extensive Public Records Act requests for documents relating to the Carnegie SVRA, we are not aware of any reconnaissance efforts or surveys of the lower reaches of Corral Hollow Creek documenting where its flows ultimately go. However, previous regulatory actions by both the Regional Board and the U.S. Army Corps of Engineers have concluded that Corral Hollow Creek is a water of the United States. *See* Army Corps letter to DPR and Carnegie SVRA (Aug. 23, 2005); RWQCB, Water Quality Certification Order (July 12, 2005); RWQCB, Cleanup and Abatement Order No. R5-2008-0713 (enclosed).

Given the extensive drainages that have been installed in the Valley region below Corral Hollow Creek, CSPA and PEER believe it is most likely that, during the rainy season, Corral Hollow Creek is routed through various drains and ultimately discharged to the San Joaquin River. *See, e.g.*, Central Valley RWQCB Report (noting that agricultural drains below Corral Hollow Creek were influenced by the "West side Coast range streams" and ultimately discharges to Old River in the Delta) (enclosed). However, until the fate of the creek's waters is determined, the Department should not be able to claim coverage under the Small MS4 Permit while maintaining

that Corral Hollow Creek is not a water of the United States. If the Regional Board approves that factual assertion included in the SWMP (albeit without any evidentiary support), the proposed Small MS4 would prove to be unenforceable given the Department's assertion and the Board's approval that Corral Hollow Creek is not tributary to the San Joaquin. Prior to approving the SWMP or the use of the Small MS4 Permit, the Regional Board should investigate the fate of flows in Corral Hollow Creek and determine whether or not it qualifies as a water of the United States.

III. In Addition, the Regional Board Cannot Approve the SWMP Because of its Serious Lack of Critical Details, Omission of Adequate BMPs and Omission of Adequate Monitoring.

Although there are some BMPs outlined in the SWMP, for the most part those BMPs are presented much too vaguely for the Board or the public to properly evaluate their effectiveness. In addition a number of important BMPs are not proposed or discussed. The monitoring plan also is extremely cursory and does not amount to a definite, assessable plan. Lastly, rather than stay focused on its responsibilities, the Department attempts to use significant portions of its SWMP to place blame on other alleged sources of discharges. The Department and Carnegie SVRA should worry about cleaning up their own obvious pollution problem before pointing fingers at other relatively innocuous possible pollution sources in the watershed.

A. Additional BMPs must be required to achieve the MEP standard and to meet water quality standards.

Staff and the Regional Board should order additional BMPs to be added to the SWMP. Given the magnitude of pollution discharging from Carnegie SVRA, the Department must take all steps necessary to minimize those discharges as soon as possible.

All trails at the SVRA should be closed during all rain events. The SWMP acknowledges that allowing use of the trails and open areas during rain events "creates a greater likelihood that the soil will become mobilized and suspended in storm water." SWMP, p. 52. The SWMP does indicate that "[l]imiting recreation and preventing soil disturbance during this period will help ensure more soil stays in place." *Id*. However, when additional detail about what the Department means by "closing" hillsides during rain events, it turns out that it is not during every rain event but only when a determination is made by staff that "an emergency vehicle cannot travel safely on these trails." *Id*, p. 60. Even that assertion is inaccurate, the referenced "trails" being limited to the "primary trails", *i.e.* roads. The condition of those roads will undoubtedly be better than the conditions of the secondary and tertiary trails (ATVs and motorcycles and motorcycles only, respectively). By the time the primary trails are impassable to emergency vehicles, the secondary, tertiary, and any illegal "other" trails would already be releasing large quantities of sediment. By placing a subjective onus on staff to determine when an undisclosed emergency vehicle (are these off-highway vehicles themselves?) can safely negotiate a wet road, the Department sets up a process that will not result in closures even when trails are discharging significant quantities of sediment, will be difficult to implement in a timely manner, and may not be implemented consistently. Instead of the emergency vehicle standard, the SWMP should make clear that, beginning immediately, Carnegie SVRA trails are closed whenever it rains 0.1 inches or greater and remain closed until dry.

The SWMP is very diplomatic in its choice of words describing some riders' penchant for ignoring established trails and establishing "voluntary" trails. As the SWMP notes, "[m]any attempts have been made in the past to address the issue of voluntary trails." SWMP, p. 54. These are illegal trails and a major source of sediment problems at Carnegie SVRA. *See generally* Whitaker, Carol, "Erosive Effects of Hillclimbing on Clay Soils in Carnegie State Vehicular Recreation Area (June 1980) (enclosed). The SWMP generally describes 25 years of efforts to stop the creation of illegal trails at the SVRA. SWMP, p. 54. Even when portions of hill trails are fenced or flagged, one can readily observe recent use of illegal trails by motorcyclists up hillsides that cut off whole stretches of switch backs. *See* S. Bond photos (May 6, 2011) (enclosed). It is apparent that rider education, flagging of trails or even partial fencing are not sufficient to assure that all of the riders stay on the trails, especially at hillside locations. Nevertheless, the SWMP continues to rely exclusively on rider education and reactionary steps to close areas once the illegal trails are there and the damage begun. Although CSPA and PEER believe the educational component as well as closure procedure play an important role, the Department should implement a more proactive BMP to prevent the creation of the illegal trails in the first place. The BMP that would assure that all cyclists stay on trail is to completely fence both sides of trails as they approach hill areas.

The SWMP should address the SVRA's dust control program. Numerous trucks spray liquids throughout the SVRA to control dust, especially in the base areas near the creek. Nothing in the SWMP describes this dust control program or the make-up of the sprayed liquid. It is our understanding that the dust control may be something other than water and/or may have a high salt content. We have observed spraying on dirt roads immediately adjacent to the creek. Any salt residues would be washed into the creek or possibly adversely affect some of the vegetation restoration in and adjacent to the creek. The SWMP should describe what the trucks are spraying and the frequency and locations of those efforts.

The SWMP mentions the general construction permit but the fails to apply its detailed requirements to ground-disturbing activities at the SVRA greater than 1 acre in size. *See* SWMP, p. 32 ("Per the USEPA's minimum requirements, Permittees are required to develop, implement, and enforce a program to minimize or prevent water quality impacts associated with runoff from all construction sites greater than or equal to one acre"). Of course, unlike the normal municipalities subject to the Small MS4 permit, the Department itself would be the person engaging in construction projects at the SVRA. Indeed, the extensive trail network suffers much of the same pollution problems associated with a large construction site. The SWMP should clarify that park must enroll in the general construction permit for any construction projects of one acre or greater.

B. Additional details about numerous other components of the SWMP must be provided in order for the Regional Board and the public to evaluate the SWMP's effectiveness.

Where the SWMP touches on BMPs that may make sense, it leaves out so many basic details that it is impossible for a reviewer to assess the scope of the proposed measures or their potential efficacy at reducing pollution from the SVRA.

The absence of a usable, detailed map showing the location of trails, discharge locations, BMPs, and other features referenced in the SWMP, makes it impossible for a reviewer to assess

the effectiveness of the SWMP and whether it achieves MEP. There is reference to a map of "illicit discharges," though the importance of that municipality-oriented requirement in the context of an SVRA is questionable. *See* SWMP, p. 27. What is necessary is a map of all the discharge locations and BMPs addressing those discharges. That map needs to be available now as part of the SWMP – not some time in the future. Some of the features identified for the "illicit discharge" map should already be included on a map accompanying the SWMP. These would include the locations of all sediment basins and their outfalls, bathrooms, the ranger station, maintenance yard, trash containers, fuel and chemical storage areas, day use staging areas, the campground, motorcycle and ATV track facilities, Corral Hollow Road and any other areas or isolates that could contain harmful pollutants." In addition, the SWMP map must depict all of the legal trails, which tier they belong to and which trails are slated for removal as well as the schedule of removal. The map also should show all existing "voluntary" trails and indicate when they are scheduled for removal and restoration. The map should depict the closure areas and gates described in the SWMP. The map also should depict all of the discharge locations from the existing trail and road system and any BMPs associated with those discharge locations. The map should show where trail fences currently are installed and any locations where additional fences are planned and when. Lastly, the map should depict the monitoring locations associated with the various BMPs, especially the existing basins, and all proposed new basins, as well as the Corral Hollow Creek monitoring stations, one on the upstream side of the SVRA's active riding area and one immediately downstream of the SVRA's active riding area.

The SWMP proposes to expand on the existing catch basins located in three of the SVRA's drainages as well as various rock check dams. SWMP, p. 48. Initially, the SWMP exaggerates the effectiveness of the existing basins, claiming that they appear to work based on how much sediment they remove from the basins at the end of the rainy season. SWMP, p. 52. That subjective view of the basin's effectiveness ignores the findings of the Department's own watershed assessment. As far as the Department knows, the basins fill up with sediment early in the rainy season and then serve as a net source of sediment for the remainder of the season. Even assuming there is some small reduction in mass sediment loading from the presence of the three existing basins, no detail is provided regarding the sizing of the existing or contemplated storm basins, especially in terms of storm events. One has no sense of what size storm events the existing basins can handle or how fast they fill up with sediment. We do know from the watershed assessment that the existing basins are seriously undersized and do little to mitigate the large volumes of sediment running off the facility. Watershed Assessment, pp. 131-134.

What, if any, improvements or reductions in sediment loadings and compliance with the turbidity standard can be achieved by additional basins is impossible to say without knowing the existing storm basin capacities relative to storm event sizes, the proposed storm designs for the new basins, the storm water volumes in each of the drainages, and other important details. For example, the SWMP's assertion that "Tyson Basin and the [proposed] new basin will provide 48 hours of detention time for water quality treatment" is entirely unreviewable given the absence of any information about what size storm event that assumes or whether the unstated calculations are accurate. *See* SWMP, p. 59. Similarly, the basin suggested to supplement the Carrol Basin is accompanied by no information at all upon which one could evaluate its potential effectiveness. *Id*. The addition of a new basin to the Kiln Basin system also is devoid of any details except that it will be designed to hold storm water for 48 hours for an undisclosed storm event. *Id*. There is simply insufficient information upon which the Regional Board or the public could make a determination that either water quality objectives or the MEP standard will be achieved at these

locations. Given the steepness of the terrain, the large amount of sediment and the narrowness of the canyons, we do not believe it is likely that additional basins will be effective at reducing sediments from the existing trails to a level that complies with the Basin Plan's turbidity limitation.

It seems evident that the only way the Department can stop violating water quality objectives and potentially achieve MEP at the Carnegie SVRA, it must dramatically reduce the number and density of trails and implement many more closures at the SVRA. Although the SWMP recognizes the need for this action, it fails to describe any details about how many trails or what density of trails must be achieved to meet the turbidity and other objectives or MEP. *See* SWMP, p. 51. There is mention of a trail plan but the SWMP does not include a map of that plan or how the current trail system compares to that future trail plan. *See id*., p. 54.

Similarly, for the remaining less dense trail system, the Department must implement numerous measures to break the hydrological connection between those trails and the subwatersheds throughout the park by installing numerous cross drains and diverting the water onto hillsides and away from channels and gullies. Unfortunately, although the SWMP again recognizes the importance of such measures, it fails to describe the plan for implementing such changes, how many of each type of BMP will be necessary throughout the park, where such measures need to be implemented, how long it may take to retrofit the remaining trails, and other critical details for someone to evaluate the efficacy of this BMP effort. *See* SWMP, p. 51. The best the SWMP does is a brief mention of total numbers from which no reasonable reviewer could draw any conclusions about how the hydrologic disconnection BMPs may protect water quality or achieve MEP. *Id*., p. 58 ("The improvements will be made to 8.1 miles of roads, 27 stream crossings, and 16 gullies comprising 14.7 acres of land, within the Carnegie SVRA"). Likewise, the SWMP asserts that such measures have been implemented successfully for several years but provides no evidence of where, when, how many or how the Department has monitored the effectiveness of the claimed efforts. *Id*., p. 55. There is no evidence of MEP.

Details about staffing also are in short supply, especially the number of on-duty peace officers and the frequency of patrols throughout the park. *See* SWMP, p. 18. How many SPPOs are there on duty at any given time? Where do they patrol? Are they posted at problematic erosion locations? How many citations do they hand out every year? Only by providing these and other details would one be able to opine on the efficacy of the park's current staffing and enforcement. Likewise, how such enforcement efforts will be tracked is lacking in the SWMP. *See id*. For example, are informal contacts and verbal warnings even tracked?

C. Additional monitoring must be required, as well as additional details of the monitoring plan, in order for the Board to be able to confirm BMP effectiveness and compliance with standards.

Like the BMPs, important details about the proposed monitoring are missing from the SWMP. Although the SWMP states that turbidity readings will be monitored at several points throughout the park, it vaguely references an "inlet and outlet" to Corral Hollow Creek. SWMP, p. 57. The SWMP needs to specify these two monitoring locations in order to assure that the turbidity resulting from operation of the SVRA's active riding areas is properly monitored during both rain events and non-rain weekend days. CSPA and PEER believe the monitoring locations identified by Mr. Bond as *cc_u (cc_u_8,9,10,11)* and *cc_d (cc_d_1,2,3,6,7)* are the appropriate upstream (the "inlet" in the Department's parlance) and downstream ("outlet") monitoring

locations from which to measure the SVRA's compliance with the Basin Plan's turbidity and other water quality objectives.

The SWMP mentions calculating sediment yields, but provides no details about how the Department plans to go about that calculation. *See* SWMP, p. 57 ("Sediment yield within the park's basins can be quantified each year"). It mentions the need for baseline monitoring but fails to describe any plan or details how it proposes to gather that baseline data. *Id*.

In the past, the Department and its consultants chose to simply ignore the most relevant Basin Plan objective when preparing the watershed assessment, failing to measure turbidity levels in Corral Hollow Creek and failing to evaluate the SVRA's compliance with the turbidity objectives. Indeed, in discussing the standards, the watershed assessment fails to even mention the numeric turbidity objective applicable to Corral Hollow Creek. WA, pp. 161-63, 166. The details of the proposed monitoring are necessary for any rationale evaluation of the SWMP.

The SWMP should assure the Department reinstalls the vandalized rain gauge at the SVRA. Located at the very top of the park at the highest point on the southwest corner is a weather station designed to monitor and transmit rain events. *See* aerial photo (Google maps) (the coordinates of the rain gauge are +37° 37' 15.77", -121° 33' 43.14"). The rain gauge was solar powered before it was vandalized and destroyed (solar panels, antennas, etc.) by park users. The remains are still there. When functioning, the unit remotely transmitted rainfall information so that advance warning of rain events could be transmitted and picked up on line. The SWMP should require the Department to repair, operate and maintain this rain gauge. Accurate rainfall data for the SVRA is critical to assist in estimating flows and size BMPs appropriately as well as give park employees a head start on monitoring during rain events.

Lastly, the monitoring program should include a component to evaluate soil compaction that has occurred in many parts of the SVRA, presumably increasing runoff volumes that contribute to erosion and sediment discharges from the SVRA.

D. The SWMP's proposed time schedules are unnecessarily long and laden with contingencies.

The SWMP proposes a casual schedule for implementing the additional basins and other measures vaguely referenced in the plan. *See* SWMP, p. 60 (proposing to construct additional basins in four or five years, if then). Moreover, the suggested schedules are left open-ended by various contingencies including if the SVRA can obtain necessary permits from various agencies and assuming funding is available. *Id*. First of all, as noted above, Water Code Sections 13247 and 13146 trump the leisurely five-year schedule for MEP to be implemented. Both of those sections require the Department to comply with the Basin Plan now. Neither section contemplates or authorizes any schedule of compliance. Moreover, the turbidity objective and other water quality objectives have been in place for many years, and the authority for the Board to apply compliance schedules in permits implementing those objectives has long passed. Section 402(p) itself limits the length of any compliance schedule for small municipal dischargers, providing that permits for such dischargers "shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit." 33 U.S.C. § 1342(p)(4)(B). In the case of the State Board's Small MS4 Permit, the three-year maximum established by Congress ran on April 30, 2006. *See* Small MS4 Permit, p. 19 (the permit was issued on April 30,

2003). The Regional Board should order the Department to clarify its BMP plans and shorten the implementation schedule to no longer than two years to complete all of the BMPs necessary to meet all of the water quality objectives as well as the MEP requirement.

E. The SWMP's efforts to deflect blame on others is not supported by the available monitoring data and should be ordered removed by the Regional Board.

In several locations, the SWMP is used by the Department to deflect blame on others for the SVRA's poor water quality when in fact no evidence of any other significant pollution sources exists. For example, the SWMP asserts that, "[a]s demonstrated by the reduced vegetative cover within the watershed, the privately owned lands are heavily grazed in comparison to the OHMVRD managed lands." SWMP, p. 5. No evidentiary support for this statement is cited. Anyone who has observed the SVRA from Corral Hollow Creek road or certainly from within the park cannot but be struck by the obvious gullying, numerous trails, and vast denuded areas along the creek, all much greater pollution sources than any observable pollution sources on nearby grazed lands. Although CSPA and PEER believe that nearby private landowners should be doing their part to prevent erosion and additional sediments from entering the creek, as the data collected by Mr. Bond confirms, the creek was essentially unpolluted upstream of the Carnegie SVRA (as measured downstream of the old Tesla Mine and several other sources exaggerated by the Department), no reasonable mind could assume that the neighboring ranches are somehow linked to the gross pollution resulting from operation of the SVRA.

Moreover, the Department and SVRA are themselves responsible for some of the mosty visibly overgrazed lands just upstream of the SVRA. One of the most heavily grazed areas upstream of the SVRA is approximately 3,000 acres owned by the Department and leased out for grazing. Grazing impacts are evident in the Corral Hollow Creek bed in the Tesla area and in Mitchell Canyon. The SWMP should identify the lands managed and grazed by the Department upstream of the SVRA and expand the BMPs to address those grazing activities.

Similarly, the SWMP attempts to deflect blame on the Lawrence Livermore National Laboratory, the entrance for which is downstream of Carnegie. Although the SWMP would like to cast some possibility that the creek's pollution problems may lie with LLBNL, it is plain from comparing LLNL's relatively unharmed landscape with Carnegie's scarred hillsides that LLNL is not discharging concentrated slugs of turbid rainwater in the active riding areas of the SVRA. *See* SWMP, p. 6 (citing LLNL, and claiming that "[t]his area is of particular concern since it can influence the water quality of the creek within the Carnegie SVRA"). Again, these efforts to deflect uncorroborated and almost nonsensical blame to others, given the magnitude of the pollution sources observable at the Carnegie SVRA, are entirely inappropriate in a SWMP.

Lastly, the SWMP and the Department in general attempt to distract the reader and the Board from their pollution by exaggerating the possible pollution impacts of the old Tesla Mine site, several miles upstream of the SVRA's active riding areas. SWMP, p. 6. The SWMP's claim that tailings from the mine have been deposited in the areas of the SVRA where riding and pollution currently occur and that "severe aggradation of the creek bed has occurred due to this overwhelming bed load and can be seen through out the entire length of the SVRA" is hyperbole. Based on CSPA's and PEER's review of every document available for the SVRA from the Regional Board, the Department , the Corps and every other relevant agency, no such tailings have been documented anywhere near the SVRA's active riding areas. In fact, when measured by Steve

Bond, water quality upstream of the SVRA's currently operating areas showed no pollution levels indicative of any tailings at Tesla. Only once the creek passed through the SVRA's active riding areas did Mr. Bond readily observe and measure numerous violations of applicable water quality objectives. *See* Bond Dec'l.

IV. CONCLUSION.

CSPA and PEER look forward to further exploring the above concerns at the upcoming public hearing on the Carnegie SVRA SWMP requested above. The simple fact is that the Department has operated the Carnegie SVRA since the early 1980s with a complete disregard for its permitting obligations under the Water Code and, prior to CSPA and PEER filing suit in September, 2009, made essentially no meaningful effort to keep riders out of Corral Hollow Creek or to address the gross erosion and gullying occurring throughout the SVRA. CSPA and PEER appreciate that the Department's past callousness is now beginning to be replaced by what appear to be some genuine efforts to begin reducing pollution at the SVRA. However, as written, the use of the MS4 permit and the vague SWMP is largely an effort by the Department to avoid its plain duty as a state agency to meet water quality objectives as mandated by Water Code Sections 13247 and 13146 and delay even MEP for as long as possible. Thank you again for this opportunity to comment on the Carnegie SVRA SWMP and we look forward to participating in a hearing on the SWMP in the near future.

Sincerely,

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