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June 2, 2006

Mr. Gerard Thibeault
Executive Officer
California Regional Water Quality
Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside CA 92501-3348
By email: dwoelfel@waterboards.gov.gov

Attention: Mr. Dave Woelfel

Subject: Basin Plan Triennial Review

Dear Mr. Woelfel:

The California Department of Transportation (Department) appreciates this opportunity to comment on the Initial Draft 2006 Basin Plan Triennial Review Priority List. The list was attached to the meeting announcement dated May 2, 2006.

As you know, the Department's storm water and related discharges are authorized and regulated by the Caltrans Statewide Storm Water Permit. Each Board enforces the permit within its region. The Department's intent is to have all our discharges in clear and unambiguous compliance with the permit. Our comments are intended to help clarify the regulatory status of storm water within the Basin Plan. The following comments address the listed issues and also identify new issues that we believe should be considered.

Issue #2 – “Consider revisions to REC-1 and REC-2 beneficial uses and bacterial water quality objectives for surface waters based on USEPA’s national criteria ...”. SWQSTF recommendations are now likely to include: 1) adoption of a limited REC-1 beneficial use definition and limited REC-1 designation of certain waters; 2) adoption of a high flow suspension of REC-1 standards; 3) de-designation of certain waters from REC...

Comment: We strongly support adjusting the REC-1 and REC-2 beneficial uses to correlate more accurately with the recreational uses occurring or not occurring during wet weather. MS4 permittees are required to design their storm water management plans to comply with water quality standards. These standards should be based on functions or activities – in this case recreation – that are

actually present at the time discharges are occurring. Currently, the Basin Plan does not specify different bacterial objectives based on differing frequency or magnitude of water contact recreational use or the intermittent absence of uses although the resultant health risk may vary significantly. Controlling bacteria levels in storm water runoff is potentially very expensive and should only be triggered to address real risk.

Comment: As described in footnote #3, a Use Attainability Analysis will be required to de-designate certain waters from REC. UAAs are expensive and difficult to prepare. We suggest that the Regional Board consider joining with other Boards and the State Board to prepare a statewide UAA to address waters which are currently inappropriately designated as REC 1 or REC 2 during certain situations such as high storm flows.

Issue #4 – “Reformat / republish Basin Plan ...”

Comment – It may be appropriate to include the TMDLs as an appendix so that BP does not have to be republished every time a new TMDL is adopted.

Issue #7 – “Develop/revise nutrient objectives ...”

Comment – We suggest this is a lower priority.

Issue #9 – “Develop criteria for wetlands impact mitigation. Revise narrative to expand wetland definition and description of 401 process.”

Comment – We would appreciate being included as a stakeholder in this process. We also question whether this issue will be impacted or partially pre-empted by the ongoing efforts by the U.S. EPA and the U.S. Army Corps of Engineers to revise the regulations governing compensatory mitigation for activities authorized by CWA section 404 permits. The goal of the revisions is to improve the effectiveness of compensatory mitigation, expand public participation in the decision-making, and increase the efficiency and predictability of the process. See: <http://www.epa.gov/wetlandsmitigation/>

Issues #13, 14, 15 – Updating beneficial uses and WQS

Comment – We suggest that changes directly address possible compliance impacts on storm water discharges.

Issue #19 – “Revise Chapter 3 Beneficial Use table narrative to incorporate Tributary Rule.”

Comment: We understand the so-called “tributary rule” is sometimes used to address water bodies that are not separately listed in the Basin Plans of the

Regional Boards. Specifically, the rule extends the downstream WQS to the tributary waters. A major problem arises when the tributary has substantially different beneficial uses. For example, an ephemeral waterway or runoff dominated water body may not have REC 1 uses or may not be a viable source of drinking water. Although increased work is involved in identifying specific beneficial uses for the smaller waterways, this is preferable to applying the tributary rule and possibly assigning inappropriate beneficial uses and the associated water quality objectives.

Issue #20 – “Consider revisions to make it clear that water quality standards apply to intermittent waters, as well as perennial waters”

Comment: As discussed with respect to item #19, determining appropriate WQS for smaller or intermittent waters is difficult and has major ramifications. The effluent dominated waterways (EDW), for example, may reasonably not be able to support the same beneficial uses as waterways with natural flows. In 2004, the SWRCB convened a work group to address EDWs. This group is currently inactive but we believe this is a statewide issue which should more appropriately be addressed at the statewide level.

Issue #22 – “Develop waste discharge prohibitions for excessive sedimentation ...”

Comment – We would appreciate being a stakeholder in the development of these BP changes if this issue is pursued.

Issue #30 – “Develop and adopt biological criteria for managing water quality”

Comment: We support consideration of the use of biocriteria as a possible alternative to the use of numeric concentration-based objectives. Bioassessments and biocriteria have the potential to more closely approximate actual effects on beneficial uses. However, to the extent that biological criteria are developed they should replace the less relevant chemical criteria.

The following issues were not included in the table attached to the announcement; however, they are important issues for the Department.

Non-listed issue A – *Variance for groundwater from dewatering operations*

We request the Board consider including within the Basin Plan a provision and criteria for issuing a variance from WQS when the discharge consists entirely of groundwater which is returned to surface water to which it would normally migrate. We are faced with dewatering situations in which an excessive amount of state funds are spent treating flows which do not meet established objectives but which are characteristic of the local groundwater. These flows would normally flow within the aquifer to the waterway to which they are returned by the dewatering facility. Treating these ground

waters for naturally-present constituents is not a reasonable or justifiable expenditure of state funds.

Non-listed issue B – *Need* for storm water implementation and compliance procedures.

All storm water permits contain a requirement to design the Storm Water Management Plan to comply with water quality standards. For example:

- “- Discharges from the MS4s shall not cause or contribute to exceedances of receiving water quality standards (designated beneficial uses and water quality objectives) contained in the Basin Plan, and amendments thereto, for surface or groundwater.

- The MSWMP and its components shall be designed to achieve compliance with receiving water limitations. It is expected that compliance with receiving water limitations will be achieved through an iterative process and the application of increasingly more effective BMPs.” [from Order No. R8-2002-0012 (NPDES No. CAS618036)]

In addition, the MS4 permittees are required to report any instances of non-compliance to the Board and to initiate an iterative process of implementing improved BMPs. However, the permits typically do not explain how compliance is to be evaluated. And, the Santa Ana Basin Plan does not appear to describe how any particular storm water discharge is to be compared with the receiving water standards.

The compliance evaluations used for permanent discharges such as those from POTWs and industries are likely not appropriate. If evaluated end-of-pipe, virtually all urban runoff exceeds standards for bacteria, copper and other metals, and organic toxics such as dioxin. End-of-pipe comparison with standards is required if mixing zones are not allowed in the Basin Plan which is typically the situation with storm water runoff. Using the standard compliance assessment would result in triggering the iterative process upon completion of virtually any storm water monitoring effort.

An additional problem is that it is difficult to target the appropriate runoff constituents through SWMP provisions when compliance is undefined.

A possible solution, in some cases, may be to change the beneficial uses and associated objectives to recognize the inevitable water quality changes during wet weather. Another possibility is to evaluate compliance differently for storm water because it is intermittent. This alternative evaluation would focus on whether beneficial uses are being impacted rather than on numeric exceedance of objectives. A numeric exceedance could be used to trigger a subsequent evaluation of effects on beneficial uses. For example, the draft San Diego County MS4 permit establishes a triad approach for addressing water quality impairment. In this approach, exceedance

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of standards, with no other risk factors, receives the lowest priority. The San Diego Board noted the typical exceedances of WQS¹.

Regardless of the approaches considered, we believe this topic should be a priority for consideration during the Triennial Review.

Non-listed issue C – *Review of Selenium objectives*

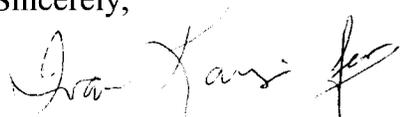
We believe it would be appropriate for the Board to develop a site-specific selenium objective. We believe the underlying rationale for the current CTR objective is not well supported and we understand that EPA is now engaged in a review of the selenium objective. Substantial uncertainties exist concerning selenium biological effects and the appropriate numeric objective that should apply to the protection of beneficial uses. It would be very unfortunate to expend significant amounts of public monies to address what ultimately may be a non-problem.

Non-listed issue D – *Probable vs. potential beneficial uses*

We suggest the Board review the beneficial uses listed because they are “potential” to ensure that they are in fact probable. Water Code Section 13241(a) specifies “past, present, and probable future beneficial uses of waters” as being among the factors that a regional board should consider in establishing water quality objectives. We are concerned that some of the identified beneficial uses may not, in fact, be probable.

Thank you for the opportunity to comment. If you have questions, please call Mike Rogers at (916) 653-3738.

Sincerely,



MICHAEL FLAKE
Chief
Office Storm Water Policy

¹ See SD MS4 Tentative Order at page 4: “7. The Copermittees’ water quality monitoring data submitted to date documents persistent exceedances of Basin Plan water quality objectives for various urban runoff-related pollutants (diazinon, fecal coliform bacteria, total suspended solids, turbidity, metals, etc.) at various watershed monitoring stations.”