

DeltaKeeper

A PROJECT OF SAN FRANCISCO BAYKEEPER

24 May 2004

Mr. Robert Schneider, Chair
Mr. Thomas R. Pinkos, Executive Officer
Mr. Kenneth D. Landau, Assistant Executive Officer
Mr. Dennis W. Westcot, Environmental Program Manager, San Joaquin Unit
Leslie Grober, Sr. L&WU Analyst
Mr. Mark Gowdy, Environmental Scientist
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center, No. 200
Rancho Cordova, CA 95670-6144

Via Fax: Hardcopy to Follow

Re: Amendments To The Water Quality Control Plan For The Control Program For
Factors Contributing To The Dissolved Oxygen Impairment In The Stockton Deep
Water Ship Channel

Dear Messrs. Schneider, Pinkos, Landau, Westcot, Grober and Gowdy:

On behalf of DeltaKeeper, WaterKeepers Northern California, San Joaquin Audubon and the California Sportfishing Protection Alliance (hereinafter DeltaKeeper), thank you for this opportunity to comment on the amendments to the Basin Plan for the control program for factors contributing to the dissolved oxygen impairment in the Stockton Deep Water Ship Channel (Plan).

Staff is to be commended for their perseverance through five long and difficult years in bringing this Plan before the Central Valley Regional Water Quality Control Board (Regional Board) for consideration. That they managed to overcome the numerous obstacles with sanity and cheerfulness intact is to their considerable credit.

DeltaKeeper believes the Plan, although flawed, is a significant step in the right direction. It provides a framework, within which stakeholders have considerable flexibility in addressing the causes of chronic oxygen depletion in the Stockton Deep Water Channel (Channel). The prohibition, milestones and interim cap on increased mass loading provide hopeful assurance that measurable progress will be secured.

Staff is appropriately assigning responsibility for solving the problem to those entities responsible for creating the problem, i.e., Channel modification, loading and flow diversion. Unfortunately, the Regional Board can only recommend that other agencies

take the lead in addressing flow reduction and Channel modification. The best guarantee that restoration efforts will be equitably distributed between all responsible parties is the certainty that a discharge prohibition will be enforced if the other factors are not adequately addressed. Otherwise, dischargers are not likely to make affirmative efforts to ensure that all responsible parties contribute their fair share to the solution. For the same reasons, the interim cap on mass loading from new sources is crucial.

There are, however, technical flaws and loopholes in the Plan that will, if not corrected, undermine any likelihood of success. For example, timelines are too long and fail to require interim reductions in the mass loading of oxygen demanding constituents. There are no requirements for annual reviews to guarantee consistent progress. No technical review panel is established to guide scientific studies. Language in the Plan is somewhat ambiguous with respect to consistency between any issued waivers or permits and Basin Plan requirements. There is no default waste load allocation applicable to Stockton in the event their lawsuit against the Regional Board is successful.

Our specific comments are as follows:

1. The Timelines Are Too Long Before Load Reductions Are Required

Little has been accomplished in furthering our understanding of the technical issues since Dr. Chris Foe's *Strawman Report* and Dr. G. Fred Lee's *Synthesis Report* described the overall dynamics of oxygen depletion more than two years ago.

Algal loads from Salt and Mud Sloughs are substantial and multiply as they're transported downstream. Eastside tributaries contribute significant, additional low algal flow. However, concentration remains the same. A pound of algal loading from Mud and Salt Sloughs translates into approximately 6 to 7 pounds of algal BOD at Mossdale.

Additional fine-tuning is desirable but enough is already understood about the overall mechanisms of oxygen depletion and identification of responsible parties to begin to meaningfully address the issue. Four more years of study before actual load reductions are developed is unreasonable and unnecessary.

In fact, the focus on additional studies is somewhat puzzling. There is a large existing database of ambient monitoring that was collected in 2000 and 2001, plus the Dahregren data collected on upstream sources in 2002 and 2003, that has never even been adequately analyzed. The analysis of existing data should be a first priority. This data could then be used to plan future studies; if it is determined they are necessary. Drs. Lee and Foe have stated that the upstream studies recently funded by CalFed will not likely provide the data necessary to develop upstream loading allocation or be sufficient to identify the potential for effective source control.

Since it is commonly agreed that some loading reductions will be necessary, prudence would suggest that initial requirements to reduce mass loads be included in permits as they're renewed. Especially, considering there is already a 40% margin of safety

incorporated in the Plan. Further more specific mass load reductions can then be incorporated during subsequent permit renewals, as the process is fine-tuned. There is no need to wait four plus years until we perfectly understand the issue before requiring initial load reductions. We may never "perfectly" understand the issue. Delaying loading reductions until all studies are completed will only encourage dischargers to delay completion of the studies. Low-hanging fruit should be collected up front and five years is more than enough time to complete the first phase of the TMDL.

2. The Regional Board Should Require An Annual Progress Report and Review

The Plan proposes that "stakeholders" develop, conduct and report on source, linkage and implementation studies by December 2008. Study plans are due by February 2005. Following completion of the studies, the Regional Board will consider specific waste load and load allocations by December 2009. Compliance will be required by December 2011. These exceptionally long timelines invite delay. Submitted study plans may be inadequate or information sufficient to determine load allocation may not be provided in a timely fashion.

DeltaKeeper recommends that the Regional Board require annual progress reports for public review and schedule an annual hearing to assess whether adequate progress is being achieved. The Regional Board should require staff to explicitly state the consequences for failing to meet deadlines. Further, we encourage the Regional Board to direct staff to immediately begin issuing necessary 13267 letters rather than waiting until responsible parties fail to submit workplans or studies. These 13267 letters would explicitly set forth the necessary contents, QA/QC, timelines and overall structure of required studies. Prompt issuance of 13267 letters alone would significantly accelerate the process.

3. A Technical Review Panel Should Be Established

The history of studies related to the Dissolved Oxygen TMDL strongly suggests that the proposed study plans are likely to be poorly designed and that the implementation will be technically deficient. DeltaKeeper believes it crucial that an expert technical review panel be established to provide guidance and review of workplans and study implementation. Otherwise, staff may find they lack sufficient information to establish allocations.

4. Permits Or Waivers Must Be Consistent With The Plan

The Basin Plan Amendment states that the prohibitions identified under "Control Action Considerations of the Central Valley Regional Water Board" do not apply if the discharge is regulated by a waiver of waste discharge requirements, or individual or general waste discharge requirements or NPDES permits which implement the Plan. DeltaKeeper is concerned that the ambiguity of this statement will inevitably lead to misimpression and controversy. We urge that language be added to clarify that any

issued waiver or permit must be consistent with the following policies and actions, as applicable:

- a. Ensure compliance with the dissolved oxygen objectives in the Stockton Deep Water Channel;
- b. Not lead to any unmitigated redirected dissolved oxygen impacts;
- c. Ensure that non-point source discharges be controlled so that discharges are at the lowest level technically and economically achievable;
- d. Contain sufficient monitoring provisions to evaluate mass loading and compliance with any allocations.

5. The City Of Stockton Should Be Assigned An Initial Waste Load Allocation

The Basin Plan Amendment states that "[t]he waste load allocation of oxygen demanding substances and their pre-cursors for all NPDES-permitted discharges, except for the City of Stockton Regional Wastewater Control Facility, are initially set at the corresponding effluent limitations applicable on 12 July 2004."

At times, Stockton contributes upwards of 90% of the oxygen impairment in the Deep Water Channel. Stockton is presently litigating their recently renewed NPDES permit. Should the ammonia limit protecting against ammonia toxicity in the order adopted by the Regional Board and upheld by the State Board be overturned, there may be no requirement for the City to reduce their excessive discharges of oxygen demanding substances.

DeltaKeeper believes that a waste load allocation specifically addressing the discharge of oxygen demanding constituents from the Stockton Regional Wastewater Control Facility be included in the Plan.

6. The Amendment Should Specify A Loading Cap For The Port Of Stockton Expansion

The Port of Stockton recently approved an EIR for expansion of the West Complex. This expansion anticipates a major increase in industrial activities at the Port. A mitigation measure in the EIR explicitly prohibits increased mass loading. However, no mitigation monitoring program was required.

Regional Board staff declined to incorporate the mitigation measure prohibiting increased loads into the proposed renewed municipal stormwater permit for the Port. The Plan should be amended to clarify that the mass-loading cap of oxygen demanding constituents applies to the new Port expansion. It should also require necessary compliance monitoring.

7. In Conclusion

We urge the Regional Board to:

- a. Shorten timelines and require interim reductions in the mass loading of oxygen demanding constituents;
- b. Immediately issue 13267 letters outlining specific study requirements;
- c. Require annual reports and progress hearings;
- d. Establish a technical review panel;
- e. Ensure that any issued waivers or permits are consistent with the Basin Plan;
- f. Provide the City of Stockton with an initial waste load allocation, and
- g. Clarify that the mass-loading cap applies to the Port of Stockton expansion.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact me at 209-464-5090.

Sincerely,



Bill Jennings

Cc: Leo O'Brien, WaterKeepers Northern California
Sejal Choksi, San Francisco BayKeeper
Jim Crenshaw, California Sportfishing Protection Alliance
Waldo Holt, San Joaquin Audubon