



November 20, 2012



Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comment Letter – San Diego Region Los Penasquitos Lagoon Sediment TMDL

Dear Ms. Townsend:

The San Diego County Office of Education (SDCOE) hereby submits the following comments regarding the proposed approval by the State Water Resources Control Board (State Water Board) of the Los Penasquitos Lagoon Sediment TMDL, which was adopted by the California Regional Water Quality Control Board, San Diego Region (Regional Water Board) as Resolution R9-2012-0033 on June 13, 2012.

SDCOE has not previously submitted comments on the TMDL to the Regional Water Board because SDCOE received no notice that the Regional Water Board was engaging stakeholders in the TMDL development process. Neither the Regional Water Board nor any of the municipality stakeholders provided SDCOE with any notice that they were developing the TMDL. In fact, until October 20, 2012, SDCOE was not aware that the Regional Water Board had adopted a TMDL for the Los Penasquitos Lagoon.

The closed door nature of the stakeholder development process and the lack of notice to SDCOE and other similarly situated agencies raises significant due process issues for the SDCOE. In light of the fact that the lack of notice to SDCOE prevented SDCOE from participating in the stakeholder process, SDCOE requests that the State Water Board assign additional weight to the SDCOE's comments.

Background: Currently, SDCOE serves approximately 45 school districts located throughout San Diego County. Three of the districts, Del Mar Union, Poway Unified and Solana Beach, are located within portions of the Los Penasquitos Lagoon watershed. SDCOE is supportive of measures to restore the Los Penasquitos Lagoon.

Concerns: SDCOE is concerned because the adopted TMDL does not allocate responsibilities and waste load allocations among the Phase II, Industrial General Permit (IGP) and Construction General Permit (CGP) dischargers. SDCOE is concerned about the lack of allocation because it incentivizes existing large dischargers such as the municipalities that made up the stakeholder group that developed the TMDL to take the majority if not all of the waste load allocation. Future CGP, IGP, and Phase II dischargers, including the districts mentioned previously, could be left with a zero sediment discharge allowance. Compliance with such an allocation would not be feasible.

SDCOE is further concerned that the failure to allocate responsibilities of Phase II, CGP, and IGP dischargers under the TMDL will force unnecessary, or duplicative efforts. For example, the TMDL proposes long term monitoring requirements for all "Responsible Parties." This implies that CGP dischargers will need

to participate or conduct their own monitoring in the receiving waters covered by the TMDL. By nature, this monitoring would be duplicative of the monitoring conducted by the permanent Responsible Parties, including the Phase I dischargers. Due to this uncertainty, the districts mentioned previously do not know whether it will have to face substantial expenditures in the future for TMDL implementation because of its construction, maintenance, and operations.

Further, if all Responsible Parties are not clearly identified, it will be very difficult (if not impossible) for all affected parties to cooperate in TMDL implementation, including entering into a Memorandum of Understanding and developing a comprehensive Load Reduction Plan within the timeframes specified in the TMDL. It will likewise be very difficult for the State Water Board staff to amend the Phase II, CGP, and IGP permits in the future to include the TMDL requirements. The fact that future Phase II, CGP and IGP dischargers are not ascertainable at this time raises questions about the viability of this entire approach.

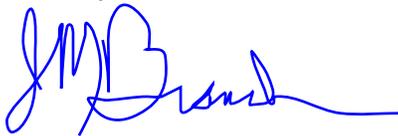
Requests:

SDCOE respectfully requests that the TMDL documents be amended to:

1. Clearly indicate which Phase II municipal, CGP and IGP permittees will have responsibilities under the TMDL requirements. By doing so, the permittees will be able to understand whether they must anticipate the potentially substantial expenses related to Los Penasquitos Sediment TMDL implementation; and
2. Exclude IGP permittees such as school bus maintenance facilities that do not have the capacity for long-term sediment loading on the watershed.

If you have any questions, please call me at (619) 929-6334 or Steve Herrera with Herrera Engineering Consultants, Inc. at (530) 677-1854.

Sincerely,



Joanne M. Branch
Group Manager

cc: Randy Wheaton, Del Mar Union
Mike Tarantino, Poway Unified
Caroline Brown, Solana Beach
Steve Herrera, Herrera Engineering Consultants, Inc.