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November 26, 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 Del Mar Union School District (District) 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. The TMDL 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.

The District has not previously submitted comments on the TMDL to the Regional Water Board because the District 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 the District¹ with any notice that they were developing the TMDL. In fact, until October 20, 2012, the District 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 the District and other similarly situated agencies raises significant due process issues for the District. In light of the fact that the lack of notice to the District prevented the District from participating in the stakeholder process, the District requests that the State Water Board assign additional weight to the District's comments.

Background: Currently, the District has approximately 9 existing K-12 schools that are located within the Los Penasquitos Lagoon watershed. The District is supportive of measures to restore the Los Penasquitos Lagoon.

Although District does not have a school bus maintenance facility that is subject to the Industrial General Permit (IGP), the District contracts for school busing services.

¹ In addition, the District understands that the San Diego County Office of Education, which assists the District and other San Diego County school districts with stormwater issues, was also not provided any notice of the stakeholder development process.

The District is subject to the Construction General Permit (CGP) and associated requirements when construction or reconstruction activities cause land disturbance of 1 acre or more. However, the District does not currently have any active construction projects that are subject to the CGP.

Concerns: The District is concerned because the adopted TMDL does not allocate responsibilities and waste load allocations among the Phase II, IGP and CGP dischargers. The District 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 District, could be left with a zero sediment discharge allowance. Compliance with such an allocation would not be feasible.

The District 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 District does 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:

The District 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.

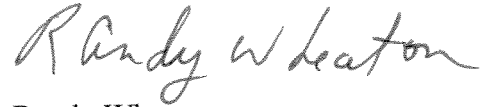
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If you have any questions, please call me at (858) 755-9301 ext. 3685 or Steve Herrera with Herrera Engineering Consultants, Inc. at (530) 677-1854.

Sincerely,

A handwritten signature in cursive script that reads "Randy Wheaton".

Randy Wheaton

Director Maintenance & Operations

cc: Joanne Branch, SDCOE
Steve Herrera, Herrera Engineering Consultants, Inc.