Bay Area Clean Water Agencies
A Joint Powers Public Agency
Leading the Way to Protect our Bay

April 12, 2010

Ms. Janet O'Hara
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Submitted via electronic mail to *johara@waterboards.ca.gov*

RE: Basin Plan Amendment to Add Water Bodies and Beneficial Uses

Dear Ms. O'Hara:

Thank you for the opportunity to provide comments on the draft amendment to the San Francisco Bay Basin Plan (Basin Plan Amendment) to add currently unnamed water bodies and beneficial uses to Table 2-1. In addition to the comments provided herein, we support and incorporate by reference the relevant comments submitted on this Basin Plan Amendment by the City of Sunnyvale on April 9, 2010. BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 6.5 million people in the nine county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals charged with protecting the environment and public health.

BACWA members discharge treated and disinfected municipal wastewater into San Francisco Bay and its tributaries. When a beneficial use has been designated in a Basin Plan and water quality objectives necessary to protect that use are established, municipal agencies that discharge must comply with effluent limits based on those objectives regardless of cost or benefit to water quality.[1] Once a beneficial use has been established for a water body it cannot be changed without completing a Use Attainability Analysis (UAA), or a Basin Plan Amendment, both of which are very time and resource-intensive.[2] Thus, the addition of "new" designated beneficial uses can have substantial implications for POTW operations and infrastructure and the communities that they serve.

The difficulties of remedying inappropriate or unintentional designations have been made clear in the challenges surrounding discharges from the City of Vacaville's municipal wastewater treatment plant. In that case, Vacaville was issued a permit that included limits

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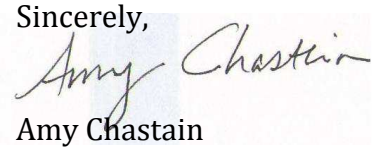
[1] *See Burbank v. SWRCB,* 35 Cal. 4th at 613, 627, n7 *citing* 33 U.S.C. §§1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3).
[2] A UAA, for example, requires a through scientific assessment of the factors affecting attainments of use and includes a detailed consideration of the physical, chemical, biological, and economic use removal criteria described in EPA regulation. 40 C.F.R. 131.10(g) et seq.

derived from water quality objectives to protect, among other uses, municipal and domestic water supply (MUN) and cold freshwater habitat (COLD). In its review of the permit, the State Water Resources Control Board (State Water Board) concluded that these uses were not appropriate for the waterbody, but that to address the inappropriate use designations, the Central Valley Regional Water Quality Control Board had undertake a Basin Plan amendment process.

The staff report accompanying the draft Basin Plan Amendment suggests that it is not the Water Board's intent to designate– either directly or indirectly through application of the tributary rule – new beneficial uses. For example, the introduction to the staff report states that "[t]he beneficial uses addressed in this Staff Report are existing uses and the purpose of this amendment is to clarify and provide transparency to the public."[3] Similarly, the staff report states that the main objective of this project "is solely to add clarity to the Basin Plan, not to add any new regulatory standard, requirement, or program."[4] We understand this to mean that this Basin Plan Amendment is essentially a housekeeping measure.

BACWA requests that the Water Board confirm our understanding that this amendment is not intended to effect significant changes in POTW plant operations or infrastructure but is merely intended to articulate uses that are currently being protected. We also respectfully request that the Water Board ensure that it has reviewed relevant discharge permits to ensure that the proposed amendment will not have inadvertent impacts POTW discharge permits.

Sincerely,



Amy Chastain
Executive Director
Bay Area Clean Water Agencies

[3] Staff report at page 1.
[4] Staff report at page 3.