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January 25, 2006

Tam Doduc, Chair  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
Attn: Selica Potter, Clerk to the Board



SSO Hearing: 2/8/06

**Re: Statewide General Waste Discharge Requirements for Wastewater  
Collection System Agencies - Sanitary Sewer Overflow Reduction Program**

Dear Chairwoman Doduc:

I am writing on behalf of the 30 member counties of the Regional Council of Rural Counties (RCRC) to express our concerns relating to the proposed Statewide General Waste Discharge Requirements (WDR) for Wastewater Collection System Agencies and the accompanying Monitoring and Reporting Program (MRP) to implement the Sanitary Sewer Overflow Reduction Program. RCRC supports the goals of the State Water Resources Control Board (State Board) to reduce the number and volume of Sanitary Sewer Overflows (SSOs) throughout the state. However, we request your consideration of the following points of concern.

RCRC seriously questions the projected \$71.86 annual cost per household to implement the Statewide WDR that is contained in the draft Fact Sheet dated December 5, 2005. RCRC is concerned that it may greatly underestimate the real cost per household for small rural California communities. This annual cost figure was arrived at by extrapolating cost data associated with implementation of the Santa Ana Regional Water Board's general WDR. RCRC does not accept the premise that this annual cost estimate based on the cost data of twenty-one agencies which discharge to the Orange County Sanitation District fairly accurately represents what can be expected statewide. RCRC urges that further analysis be conducted to determine the actual annual cost of compliance for households in small rural communities, and the cost to counties and special districts that will be required to enroll in the permit. This analysis must be conducted prior to adoption of the WDR and MRP if the State Board is to make an informed decision.

Additionally, RCRC urges the State Board to provide financial assistance to small rural communities to cover the costs of implementing the new reporting, operation, maintenance and capital requirements. The majority of these communities have funding limitations and are currently struggling to meet existing state and federal water quality requirements. Many have never before been subject to wastewater permits issued by the State Board or regional boards. The development of sewer system management plans (SSMPs) alone will be very costly, particularly where an SSMP or an equivalent document does not exist. The State Board should not assume that these communities are in the position to raise rates, for example, to pay for new equipment and additional personnel to implement the WDR and MRP.

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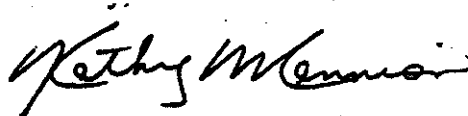
RCRC understands that one of the primary purposes for developing statewide general WDRs is to bring consistency to the regulation of collection systems. If this is the case, it is unclear why the WDR specifies that regional boards may impose more stringent requirements than those found in the WDR. RCRC believes that once a collection system operator is covered under the WDR that a regional board should not impose any new or different requirements except under extraordinary circumstances or where legally required. Likewise, where a collection system is subject to an existing NPDES permit, a determination should be made by the State Board and regional board whether the system will be governed by the general WDR or by the NPDES permit at the time of enrollment.

Another issue of concern is the potential for increased costs due to fines or third party litigation as a result of unavoidable SSOs. RCRC urges the State Board to consider providing an affirmative defense for an SSO that is unforeseen and unavoidable, such as SSOs due to extreme wet weather events. RCRC submits that legal protection from enforcement actions and third party lawsuits when a publicly-owned collection system is in full compliance with the draft WDR is not inappropriate. RCRC understands that the State Board staff is not recommending inclusion of a affirmative defense safe harbor for SSOs of this type, and instead recommends the concept of enforcement discretion with the inclusion in the WDR of facts that must be considered during any civil enforcement proceeding. RCRC notes that the proposed enforcement discretion provisions do not provide any type of safe harbor from enforcement actions should an SSO occur prior to the development and implementation of the SSMP.

Finally, RCRC is concerned that the proposed time schedule for implementation of the program elements is too short and prescriptive. RCRC urges the State Board to consider an approach which provides flexibility and establishes a timeframe that is realistic and reasonable, with particular consideration for those entities that do not have the financial means and/or staff to implement the permit requirements.

Thank you for consideration of our comments and concerns.

Sincerely,



Kathy Mannion  
Director of Water and Power

cc: Members, State Water Resources Control Board  
Bryan Brock, Economics and Effectiveness Unit