July 31, 2006

Tam Doduc, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, California 95812-0100

RE: Recommendations to the State Water Resources Control Board on how to proceed with the findings of the Storm Water Panel of Experts regarding the feasibility of establishing numeric effluent limits in storm water monitoring

Dear Chair Doduc:

The California State Association of Counties (CSAC), the Regional Council of Rural Counties (RCRC), and the League of California Cities (League) are pleased to have this opportunity to offer our collective recommendations to the State Water Resources Control Board (Water Board) on how to proceed with the findings of the Storm Water Panel of Experts (Panel) regarding the feasibility of establishing numeric effluent limits in storm water monitoring. Our organizations have had concerns in the past with the concept of establishing numeric effluent limits in storm water monitoring, as numeric limits could have significant negative economic impacts on facilities run by local public agencies. We appreciate the Water Board's efforts to use scientific findings to ascertain the feasibility of numeric effluent limits.

As representatives of local government, CSAC, RCRC and the League are in the somewhat unique position of viewing the concept of numeric effluent limits from two perspectives—first, as enforcers of local water quality objectives and, secondly, as regulated dischargers. Any effort to establish numeric limits applicable to municipal, construction, or industrial activities will have larger economic impacts on certain facilities and projects based on their size and geographical location, and we would hope that the Water Board would remain sensitive to those impacts if staff moves forward with the Panel's findings. In light of this, our recommendations are as follows:

1. The Board should adopt a policy which directs staff and regional boards not to set numeric effluent limits for municipal best management practices (BMPs).

We support the Panel's overall finding that it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs. We would ask that the Water Board adopt a policy directing staff and the regional boards to refrain from setting numeric effluent limits for municipal discharges until additional monitoring and research enables the Water Board to adopt additional policy on the application of numeric effluent criteria to municipal BMPs.

2. Any policy development using this report should be sensitive to balancing water quality issues with economic impacts.

Feasibility to local agencies means more than just whether we can achieve compliance, but also whether our citizens can afford to pay for it. Due to the financial constraints of local agencies, we are dubious that it will be plausible for city or county-owned industrial facilities to comply with numeric effluent limits. Increased monitoring or sampling requirements will have greater impacts on small facilities due to the disproportionately high per capita costs that inevitably result from such cost increases The Board must be cautious in how it uses the recommendations for industrial facilities, and put careful thought and consideration into any plans to establish numeric limits.

The Panel has cautioned the Board to consider total economic impact and to not unduly penalize California industries, and we urge the Board to be mindful of this admonition as you move forward with the report. In the case of facilities run by local agencies, such as landfills, recycling centers and material recovery facilities, water and wastewater treatment plants, vehicle maintenance yards, airports, and other transportation-related facilities, any cost increases due to changes in monitoring requirements would constitute an unfunded mandate, which we would oppose.

3. No action should be taken on numeric effluent limits in industrial activities until the current program has been fully implemented.

We feel that the current permitting system has not been as effective as possible because it has never been fully implemented. Enforcement, as delegated to the various regional boards, has always been inconsistent from region to region. While some filers are inspected regularly, other dischargers are never visited, and many do not feel compelled to file a Notice of Intent (NOI) because they have never been "caught" by the regional board. We fail to see how setting numeric effluent limits for any industrial activities will improve water quality if the enforcement structure remains the same. If numeric effluent limits are established in the future, the Water Board must be prepared to address the increased enforcement responsibilities.

In addition, as representatives of regulated industrial dischargers, we would suggest that the Water Board initiate an enhanced training and education program to help facilities learn how to effectively comply with the permit. While larger facilities may be able to hire consultants or employee in-house staff experts to help them comply with storm water regulations, smaller facilities do not have this luxury and are often left to figure out compliance on their own, especially if there are no approved monitoring groups available for the site's particular industrial activities. Inspectors often insist that components of the monitoring program be corrected but rarely provide helpful advice on how that can be accomplished. Until such a training program is established, we are doubtful that numeric effluent limits will yield an overall improvement in water quality.

4. If numeric effluent limits are implemented in future permits, the Water Board must address the enforcement role of local agencies and subsequent costs.

We agree with the observations of the panel regarding the ability of municipal agencies to enforce of numeric limits. The Panel's report states:

- *"Since the storm-to-storm variation at any outfall can be high, it may be unreasonable to expect all events to be below a numeric value. In a similar circumstance, there are a number of storms each year that are sufficiently large in volume and/or intensity, to exceed the design capacity volume or flow rates of most BMPs. (Page 6) The Panel acknowledged that several to more times each year, the runoff volume or flow rate from a storm will exceed the design volume or rate capacity of the BMP.* ***Stormwater agencies should not be held accountable for pollutant removal from storms beyond the size for which a BMP is designed." (Page 10)*** [Emphasis added]

- "*Monitoring for the enforcement of numeric effluent limits would also be challenging. While spot checks could be made at some of the many outfalls in an areas, there is wide variation in stormwater quality from place to place, facility to facility, and storm to storm." (Page 6)*

As MS4 permit holders, we are concerned that many local governments will be expected to enforce numeric effluent limits if the Water Board implements them as statewide policy. Currently, municipal permittees are responsible for monitoring, inspecting, and enforcement of industrial and construction facilities that discharge to MS4s. While it is reasonable and plausible for municipalities to enforce BMP requirements, the prospect of enforcing numeric effluent limit requirements is complex, uncertain, and even if possible, will greatly increase our program costs. Any such cost increases will constitute an unfunded mandate, and must be addressed by the Water Board before making any statewide policy decisions on the use of numeric effluent limits.

5. If numeric effluent limits or Action Levels are implemented in future permits, they should only be used to trigger BMP review, not to elicit enforcement actions.

One of the most daunting aspects of the Water Board's exploration of the feasibility of numeric effluent limits is that the agency has yet to address how the limits will be used. Our organizations remain opposed to the concept of using numeric effluent limits as a punitive measure since it will in many cases create an implementation cycle of boundless corrective actions that will never realistically achieve the specified numeric goals. It would also put dischargers in danger of legal actions from environmental and community groups for violating state environmental regulations.

If either numeric effluent limits or Action Levels as described by the Panel are implemented in future permits, we recommend that they not be used to trigger an automatic enforcement action, but instead be used to identify extreme exceedences where current BMPs are clearly insufficient. This will enable the Water Board to identify "bad actors" with recurring exceedences while allowing other dischargers to review and adjust BMPs to correct the pollutant levels. This would also allow the Water Board to conduct further investigations of pollutant sources in order to identify exceedences due to background levels.

6. Before undertaking additional data collection to establish numeric effluent limits or Action Levels, the Water Board should provide a comprehensive cost analysis of the data collection to the public.

The Panel recommends that additional data collection be done before establishing numeric effluent limits for many industrial activities. However, this is a potentially expensive undertaking that will not only cost dischargers, but the state as well. Once Water Board staff has assessed the types and extent of data collection needed to establish numeric effluent limits, we feel it would be prudent for staff to undertake an exhaustive cost analysis to be made available for public comment before any such data collection begins.

7. Establish a stakeholder working group to help guide Water Board staff on how to proceed with the Panel findings.

While we appreciate the opportunity to comment, we feel that the only way to approach such an important issue is to involve all stakeholders in a more collaborative and in-depth fashion, especially in light of the Water Board's restriction of comments on the report's contents. However the Water Board chooses to approach numeric limits, it must be done in a thoughtful and comprehensive manner to find the right balance between protecting water quality and enabling dischargers to continue operating their facilities. Ultimately, we view this comment period and the corresponding workshops as the starting point of a collaborative process which will lead to a broader statewide policy. We strongly recommend that the Water Board establish a working group comprised of stakeholder

representatives to help guide Water Board staff on how to proceed with the Panel findings.

We thank you for your consideration of our input in this matter. Please feel free to contact us if you have any questions or would like to discuss our recommendations further.

Sincerely,

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