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November 28, 2006

REFER TO FILE NUMBER  
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**VIA E-MAIL AND U.S. MAIL**

Ms. Song Her  
Clerk to the Board, Executive Office  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Re: Comment Letter – Sediment Quality Objectives

Dear Ms. Her:

These comments are provided in response to the State Water Resources Control Board (“SWRCB”) Notice of Public Scoping Meeting (“Notice”) dated September 22, 2006, which states that the SWRCB is seeking “written comments and oral suggestions on the scope and content of the environmental information that should be included in the environmental document” that will be prepared for the Sediment Quality Objectives for Enclosed Bays and Estuaries of California (“SQOs”). Thank you for the opportunity to submit these comments on the scope and content of the environmental document for the SQOs.

These environmental document comments are submitted on behalf of the more than 3,300 member companies of the Construction Industry Coalition on Water Quality (“CICWQ”). CICWQ is comprised of the four major construction and building industry trade associations in Southern California. These include the Associated General Contractors of California (“AGC”), the Building Industry Association of Southern California (“BIA/SC”), the Engineering Contractors Association (“ECA”) and the Southern California Contractors Association (“SCCA”). The membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders throughout the region and state. These organizations work collectively to provide the necessary infrastructure and support for the region’s business and residential needs. All of the member companies represented by CICWQ are impacted by the development of sediment quality objectives, as are hundreds of thousands of construction employees throughout California, and builders working to meet the ever-growing demand for housing.

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The Notice states that the SWRCB is “specifically seeking recommendations and suggestions on the range of actions, alternatives, mitigation measures, and potential significant effects to be analyzed in the environmental document.” This letter focuses on environmental document issues pursuant to the California Environmental Quality Act (“CEQA”). CICWQ is also submitting a separate comment letter on technical and policy issues.

## **I. BACKGROUND TO SWRCB CEQA PROCESS.**

The proposed SQOs and related adoption of a draft Sediment Quality Plan for Enclosed Bays and Estuaries are a “project” under CEQA, and thus would require the preparation of an environmental document, either a Negative Declaration (ND) or an Environmental Impact Report (EIR). But, because some state regulatory agencies already require a plan or other written documentation with environmental information in support of their activities, CEQA provides an exemption for “certified state regulatory programs.” As noted in the CEQA Scoping Meeting Informational Document, Development of Sediment Quality Objectives for Enclosed Bays and Estuaries, August 17, 2006, (“Informational Document”) on page 2, the Water Quality Control (Basin)/208 Planning Program, has been certified by the Secretary of Resources as a regulatory program (Cal. Code Regs., tit. 14, § 15251(g)). What this means from a practical standpoint is that, instead of preparing an Environmental Impact Report, SWRCB can prepare a substitute type of document. Thus, as stated in the SWRCB Notice, the SWRCB plans to prepare a Substitute Environmental Document (SED).

CEQA includes some requirements for a certified regulatory program and a number of other requirements for the substitute document, which are intended to provide the same level of environmental analysis, public review and noticing as required for an ND or an EIR. A key requirement for the substitute document is that it “[I]ncludes a description of the proposed activity with alternatives to the activity and mitigation measures to minimize any significant adverse effect on the environment of the activity.” (Pub. Res. Code § 21080.5(d)(3)(A)). In addition, the agency’s certified regulatory program must do the following:

- (A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment.
- (B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.
- (C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

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(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(Pub. Res. Code § 21080.5 (d)(2).)

The CEQA Guidelines<sup>1</sup> also emphasize the intent of the certified regulatory programs exemption to provide the same type of analysis as a full EIR or ND, stating that a “certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible.” (Cal. Code Regs., tit. 14, § 15250.) The substitute environmental document shall include at least the following items:

- (a) A description of the proposed activity, and
- (b) Either:
  - (1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or
  - (2) A statement that the agency’s review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(Cal. Code Regs., tit. 14, § 15252.)

Examples of past SWRCB documents illustrate that the SED typically includes a variety of topics that are required in an EIR, such as growth-inducing and cumulative impacts. However, contrary to the spirit and the requirements applicable to certified state regulatory programs and SEDs, past SWRCB SEDs typically have not had a robust analysis of many topics to be addressed under CEQA. Given the significance and far-reaching effects of the proposed SQOs, the SWRCB must conduct a thorough and robust impact analysis for this proposal.

Case law also emphasizes that certified regulatory programs remain subject to core CEQA policies. When “conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of

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<sup>1</sup> For purposes of implementing CEQA and specifying the “objectives, criteria and procedures to be followed” in implementing CEQA, the SWRCB and Regional Water Quality Control Board regulations incorporate by reference the State CEQA Guidelines (Title 14, California Administrative Code, Division 6, Chapter 3). (Cal. Code Regs., tit. 23, § 3720.)

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CEQA.” (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal. App. 4<sup>th</sup> 1392, 1422.)

The SWRCB has adopted guidelines for their regulatory program, consistent with CEQA requirements. These are found in Cal. Code Regs., tit. 14, §§ 3775-3782 and Appendix A following § 3782. The SWRCB guidelines generally follow the language of CEQA and the CEQA Guidelines. The key regulation is that SWRCB requires that any “standard, rule, regulation, or plan proposed for board approval or adoption must be accompanied by a completed Environmental Checklist contained in Appendix A to this subchapter or such other completed checklist as may be prescribed by the board, and a written report prepared for the board.” (Cal. Code Regs., tit. 14, § 3777, subd. (a)). A checklist in a substitute document should function similarly to an Initial Study. It should function as an initial review of environmental effects (See the CEQA Guidelines section on Initial Studies, including the purposes of an Initial Study, Cal. Code Regs., tit. 14, § 15063).

Along with the SED evaluation of impacts for significance, the regulations require SWRCB to identify and include “[R]easonable alternatives to the proposed activity” and “[M]itigation measures to minimize any significant adverse environmental impacts of the proposed activity.” (Cal. Code Regs., tit. 14, § 3777). The SWRCB “shall not approve a proposed activity if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the proposed activity may have on the environment.” (Cal. Code Regs., tit. 14, § 3780).

In summary, while the SWRCB may properly submit an SED in lieu of an EIR, the SED must provide an analysis of the action that is consistent with CEQA standards to qualify as the functional equivalent of an EIR. Further, the SWRCB’s action on the SQOs is still subject to all CEQA requirements and standards that are not otherwise replaced by the certified regulatory program and related regulations.

## **II. GENERAL COMMENTS ON CEQA SCOPING.**

### *SED Level of Detail: Program or Project Level.*

The SWRCB Notice and Informational Documents do not indicate the level of detail or type of SED to be prepared. Based on the general and programmatic nature of the SQOs at this time, it appears that the SWRCB may be envisioning a Program level analysis, rather than a project specific analysis. Viewing the SED as analogous to an EIR, CEQA provides for other types of EIRs as well, such as a staged EIR or a Master Environmental Impact Report. The SED should explain its level of detail and the level of environmental clearance provided, as well as any anticipated future environmental review with later, more detailed, activities. If the SED is prepared as a Program level document, then, as provided in the CEQA Guidelines, the SED should “consider broad policy alternatives and program wide mitigation measures” as well as

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addressing “the effects of the program as specifically and comprehensively as possible.” (Cal. Code Regs., tit. 14, § 15168, subd. (b)(4) and (c)(5).)

*No Initial Study or List of Potential Environmental Effects.*

The Notice and the Informational Document state the SWRCB’s request for “suggestions on the scope and content of the environmental information that should be included in the environmental document” and “recommendations and suggestions on the range of actions, alternatives, mitigation measures, and potential significant effects to be analyzed in the environmental document” Yet, the Informational Document does not provide enough information about the project or its potential environmental effects in order to provide a complete response to the SWRCB request. When a Notice of Preparation is prepared for an EIR, it is to be accompanied by an Initial Study or information about the probable environmental effects of the project. (Cal. Code Regs., tit. 14, § 15082(a)(C)). The Notice of Preparation “shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.” Cal. Code Regs., tit. 14, § 15082(a)(1)). The SWRCB Notice and Informational Document should serve the same purpose and seek the same kind of information that is sought by a Notice of Preparation of an EIR, yet the materials do not comply with the standard for information in a Notice of Preparation. The Informational Document provides no information on the probable environmental effects of the project. For a project of this magnitude, with potential statewide effects, the Informational Document is not adequate to alert the public to the possible consequences of the project and thereby solicit suggestions on the scope and content of the SED. This problem is further compounded by the fact that the Informational Document lists several staff recommendations. The SWRCB regulations require that an Environmental Checklist be prepared when a plan is proposed for board approval or adoption. While the SQOs are not yet at the stage of board consideration, the use of the wording “staff recommendation,” without an accompanying checklist or any kind of environmental analysis, give the appearance that the SED is simply a formality.

For the reasons listed above, these comments should be considered preliminary and CICWQ reserves the right to comment further, and not be limited by these comments, when additional information is available.

*Lack of Project Description.*

The Informational Document does not include a Project Description. The Informational Document contains a list of “issues” and “alternatives” and provides some background information for each issue, along with the baseline, alternatives and the Staff Recommendation. The Informational Document also includes a “Preliminary Draft Plan” (“Plan”). The Program of Implementation in the Plan discusses receiving water limits, sediment monitoring, and, a sequential approach and focused studies. The Plan does not provide the amount of information

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needed for an adequate project description, and therefore it does not meet basic informational requirements of CEQA. While this may be remedied in the SED, the lack of an adequate project description makes it difficult to understand the potential impacts of the SQOs.

Based on the Informational Document, the project is being defined simply as the adoption of SQOs. But, framing the project this way does not give a complete picture of the scope of the project. In addition to the SQOs themselves, under CEQA, the project includes the actions that must be taken to comply with the SQOs and the reasonably foreseeable physical changes to the environment that will result from the SQOs. The CEQA Guidelines define a project as “the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (Cal. Code Regs., tit. 14, § 15378(a)).

The project must be defined and analyzed in such a way that anyone affected by the project will be put on notice as to what is expected of them and the potential impacts of the project. This includes but is not limited to all private property owners, all property managers and associations, and all governmental or quasi-governmental agencies that will be called upon to implement provisions of the Plan or to grant approvals or licenses to others who must comply with the SQOs. All these parties must have accurate and complete information to participate intelligently in the analysis of the project. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.3d 185, 197 and *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App.3d 577, 592).

In addition to CEQA requirements, a more detailed project description is required by California Water Code section 13242, which requires a “description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.” (Cal. Wat. Code § 13242, subd. (a).)

*Ambiguous Project Location.*

The Plan states that it applies to “direct discharges into bays and estuaries.” Enclosed bays and estuaries are defined on page 37 and 38 of the Plan, but, then the list of specific bays and estuaries/coastal lagoons is stated to include “but not be limited to” those specific locations. In addition, it is difficult for the public to discern whether a particular coastal area would be considered an enclosed bay (see Informational Document, p. 37 n.2; see also p. 42 defining MLOE tools as applicable to “Euhaline Bays and Coastal Lagoons south of Point Conception”). A map should be made available identifying all areas defined as enclosed bays under the definition provided in the Plan. Similarly, a map of all estuaries and coastal lagoons covered by the SQOs should be provided (see Informational Document, p. 38, n.3).

The Plan states that the “SQOs shall be implemented as receiving water limits in NPDES permits where the Regional Water Board believes there is the reasonable potential that the discharge of toxic or priority pollutants may cause or contribute to an exceedance of an

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applicable SQO or SQOs.” This statement greatly expands the geographic area subject to potential impacts of the Plan. Although the Preliminary Draft Plan states that it “applies only to direct discharges into bays and estuaries,” CICWQ is concerned about the potential for upstream discharges to be regulated under the SQOs. For example, MS4s that discharge directly into bays and estuaries may be subject to additional regulation. Local and regional government, and the general public, must be notified of the potential geographic area of impacts. We request that the SWRCB clarify the geographic area subject to the SQOs.

*Baseline.*

The Informational Document does not state what the existing conditions are, or what the baseline physical conditions are by which the SWRCB will determine whether an impact is significant (see Cal. Code Regs., tit. 14, § 15125). The “baseline” condition described for each of the issues is a regulatory baseline, and not a description of the existing environmental conditions. The SED must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the Informational Document was published, or, at the time environmental analysis is commenced. (See CEQA Guidelines, Cal. Code Regs., tit. 14, § 15125, subd.(a).) Also, the environmental setting is normally the baseline physical conditions for determining whether an impact is significant or not. It is not clear whether the SWRCB has determined that the existing setting and the baseline are the same for purposes of the environmental analysis. If the SWRCB determines they are not, then the SED should explain the baseline condition and how and why it is the appropriate condition for determining the significance of impacts. This is particularly important for the description and analysis of the “no project” alternative, as described in more detail later in these comments.

In evaluating the existing conditions/baseline, the SWRCB should address the extent to which sediment discharges or the discharges of natural compounds contribute to baseline water quality conditions. The SED should also describe and address naturally occurring processes that bring sediment to bays and estuaries and beach sand replenishment processes. What is the importance of these processes to healthy bays and estuaries? Are there other components of sediment (other than toxic pollutants) that are necessary for healthy bays and estuaries? This type of information is also required by California Water Code section 13241, which describes one factor to be considered in establishing water quality objectives as “[E]nvironmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.” (Cal. Wat. Code § 13241, subd. (b).)

*No Project Alternative.*

The SED must evaluate the “no project” alternative. (Cal. Code Regs., tit. 14, § 15126.6, subd. (e).) In evaluating the no project alternative, the SED must determine whether the baseline for determining impacts is the same as the existing environmental setting. This is particularly important for the SQOs because of the existing regulatory environment. For purposes of the no

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project alternative and existing conditions, the SED must consider “what would be reasonably expected to occur in the foreseeable future ... based on current plans.” (Cal. Code Regs., tit. 14, § 15126.6, subd. (e)(2).)

In terms of defining the no project alternative, the SED must include “the continuation of the existing plan, policy or operation into the future.” (Cal. Code Regs., tit. 14, § 15126, subd. (3)(A).). For the SQOs, this means continuation of the multitude of existing regulations that control sediment contamination.

*Statement of Goals.*

The Statement of Goals appears to serve the same purpose as the project objectives, or statement of the objectives sought by the proposed project, which is required in the Project Description of an EIR. (See CEQA Guidelines, Cal. Code Regs., tit. 14, § 15124, subd.(b).) The Statement of Goals is broad and vague. It does not provide enough detail to determine whether or not a particular alternative will meet the objectives. As currently written, a huge range of changes and approaches might be found to meet the goals. Of particular concern is the goal to build a regulatory framework, as this implies imposition of a new regulation, without any indication of what that regulation, or its effects, might be.

Additional explanation of the goals or objectives should be provided in the SED. For example, the SED should address why new and additional regulation is necessary and why existing regulation is not sufficient to protect beneficial uses.

*Adoption of rule or regulation or performance standard.*

CEQA requires that certain agencies, specifically including the SWRCB, “perform an environmental analysis of the reasonably foreseeable methods of compliance” at the time of “adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirements” (Public Resources Code § 21159(a)). The environmental analysis shall, at minimum, include, all of the following:

- (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- (2) An analysis of reasonably foreseeable feasible mitigation measures.
- (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation. (Pub. Res. Code § 21159.)

Also, “[T]he environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.” (Pub. Res. Code. § 21159.)



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The SQOs qualify as all of these things, the adoption of a rule or regulation requiring the installation of pollution control equipment, a performance standard and treatment requirements. Therefore, the SED must include an environmental analysis of the reasonably foreseeable methods of compliance in accordance with CEQA.

Given the importance of evaluating methods of compliance in the SED, some description of reasonably foreseeable methods of compliance should appear in the Information Document. However, no methods of compliance are described in that document.

Due to the failure of the Information Document to specify potential reasonably foreseeable methods of compliance, local and regional governments and the regulated community are deprived of information regarding the availability of any methods of compliance, and are precluded from determining if the potential methods of compliance may also create physical impacts to the environment. It is quite likely that methods of compliance with the SQOs would create significant adverse impacts on the environment.

As you can see from these general comments, it does not appear at this point SWRCB is committed to a complete environmental analysis of the impacts of the proposed SQOs as required by the regulations governing SEDs and CEQA. Among other problems, the inadequacies in project description, failure to describe the entire action, including inconsistencies with existing laws and regulations, failure to identify potential impacts, failure to identify or provide a means for identifying the baseline condition, and failure to identify means of compliance preclude the meaningful environmental impact study required even of state certified regulatory programs by CEQA.

### **III. SPECIFIC COMMENTS.**

Since the Informational Document does not include a checklist or information about the probable environmental effects, the SWRCB has not provided any information on the impact categories that they will examine or the depth of analysis of those categories. In addition, no information has been provided on the likely methods of compliance. Therefore, for purposes of providing input on the scope of the SED, we have assumed that compliance methods will include a broad range of measures and facilities, including reductions in sediment, treatment facilities, changes in the procedures and methodology for maintenance dredging, and potentially, additional dredging. This is only a preliminary list, as additional compliance methods are unclear based on the lack of a specific project description. Provided below are some examples of the potential impacts which must be addressed in the SED, based on a review of the Informational Document.

*Growth-Inducing Impacts.* As a result of additional regulation and costs of compliance, the SQOs have the potential to exacerbate growth pressures and force new development into other areas, causing growth-inducing effects to those other areas. This will in turn result in

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physical effects from development intensification if such growth is ultimately accommodated in other areas. If such growth were not accommodated, then there would be other effects, such as increasing the current housing shortage. Housing costs will also increase in those areas where growth is limited by the SQOs. The SED must address these issues in light of the general plans of local jurisdictions and laws requiring local jurisdictions to provide housing.

*Economic and Social Effects.* The proposed SQOs have the potential to cause substantial physical effects as a result of the economic and social effects of implementing the SQOs. The focus of analysis in an EIR is on the physical changes caused by the project, and “[E]conomic or social effects of a project shall not be treated as significant effects on the environment.” (Cal. Code Regs., tit. 14, § 15131(a)). At the same time, the CEQA Guidelines recognize that economic and social effects may result in physical effects, which must be addressed, as illustrated in the following excerpts from the CEQA Guidelines.

(a) ...An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. . . .

(c) Economic, social and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

(Cal. Code Regs., tit. 14, § 15131.)

In order to achieve the receiving water limits, to the extent that such limits are not already regulated under the Porter-Cologne Water Quality Control Act and/or Clean Water Act, there may very well be a need for expansion of, or building of new, treatment plants designed to take in and treat stormwater. These new or expanded treatment plants have the potential for significant physical environmental effects, both for the treatment facility itself and for the pipeline, conveyance and appurtenant facilities to bring stormwater to the treatment facility. There will be substantial economic and social effects of implementing these facilities, which will in turn lead to physical effects that must be addressed in the SWRCB’s SED for the SQOs.

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In light of the purpose and effects of the SQOs, the SWRCB must comply with the requirements of Water Code sections 13241 and 13242 as part of their consideration of the SQOs. The analysis prepared for these Water Code sections may suffice to address these impacts. As noted earlier, Water Code section 13242 requires the inclusion of specific implementation measures to achieve the objectives.

Local municipalities' SQOs enforcement efforts, including likely expensive monitoring, could have an effect on municipal budgets. Money spent on compliance with duplicative regulations or controlling additional pollutant sources is likely to divert money that has been allocated to address other water quality issues. This emphasizes the importance of the SWRCB providing a link between the sources that are causing the impairment, and are not already being adequately regulated, and the compliance methods. When local agencies are forced to spend limited budgets on unproven problems, the local agencies are left with no money to control the real problems.

*Cumulative.*

The cumulative impacts of other projects and regulations must be addressed. The SWRCB must describe the physical methods for compliance with these regulations and assess the potential cumulative environmental impacts of those compliance methods.

*Checklist Items:*

Based on the SWRCB's Environmental Checklist, the following are examples of the panoply of impact issues that the SED should address.

1. *Earth. Will the proposal result in:*
  - a. *Unstable earth conditions or in changes in geologic substructures?*
  - b. *Disruptions, displacements, compaction or over-covering of the soil?*
  - c. *Change in topography or ground surface relief features?*
  - d. *The destruction, covering or modification of any unique geologic or physical features?*
  - e. *Any increase in wind or water erosion of soils, either on or off the site?*
  - f. *Changes in deposition or erosion of beach sands, or changes in siltation, depositions or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?*
  - g. *Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure or similar hazards?*

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The SQOs may have potential impacts in most of the areas described. If the SQOs result in restrictions on the natural transport processes that carry sand and sediment to the ocean, the proposed SQOs could also reduce natural beach replenishment.

As another example, the elimination of runoff and sediment from runoff would not only affect developed areas, but also undeveloped areas. The elimination of runoff, particularly from undeveloped areas, can change landforms, erosion patterns and other natural and hydrological features of the natural environment.

2. *Air.*

As identified elsewhere in these checklist items, the proposed SQOs have the potential to change the location of growth and circulation patterns. These impacts will also result in impacts on air quality due to increased congestion in some locations. These would also be new impacts, which have not been considered in adopted Air Quality Management Plans, since those are based on adopted General Plans and forecasts.

3. *Water. Will the proposal result in:*

- a. *Changes in currents, or the course or direction of water movements, in either marine or fresh waters?*
- b. *Changes in absorption rates, drainage patterns or the rate and amount of surface water runoff?*
- c. *Alterations to the course or flow of flood waters?*
- d. *Change in the amount of surface water in any water body?*
- e. *Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?*

The SQOs by their intent may have an impact on items a-e above. The magnitude and type of affect will depend on the implementation mechanisms relative to sediment and dredging. The SED must address the direct and indirect effects of the proposed SQOs in each of these topical areas. Further, existing conditions must be analyzed and described in order to determine whether or not the impacts are significant.

4. *Plant Life* and 5. *Animal Life.*

Despite their environmental intent, the proposed SQOs may have adverse affects on plant life and animal life that should be analyzed thoroughly. For example, in estuarine environments, freshwater inflow is responsible for maintaining brackish estuarine conditions. If runoff to estuaries were eliminated, the natural salinity regime could be altered significantly. In addition, even runoff from undeveloped areas contributes nutrients to enclosed bays and estuaries. The SWRCB should quantify any change in the salinity regime and any potential changes to

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productivity, plant life, and animal life. Changes in sedimentation patterns, or sediment grain size, should also be estimated, as these changes can result in loss of beach habitats surrounding bays and estuaries. Further, it is reasonably foreseeable that implementation actions could include dredging, which will disturb plant and animal life in the area to be dredged, in disposal areas, and in adjacent areas.

8. *Land Use. Will the proposal result in substantial alteration of the present or planned land use of an area?*

As described above under the heading Growth Inducing Impacts, the SQOs have the potential to change planned land uses. This alteration will occur both in areas near enclosed bays and estuaries, by limiting growth, and in other areas, which will experience growth pressures as a result of limiting growth in nearby areas.

The SED must analyze the existing and planned land uses in the areas that would potentially drain to an enclosed bay or estuary (under existing conditions) and determine whether the level of development identified in an adopted plan (such as a General Plan, a population forecast used by a Metropolitan Planning Organization, a Local Coastal Plan, or similar plan) would be feasible under the proposed SQOs. If the analysis demonstrates that there will be a limitation or reduction in the amount of growth in those areas, then the SED must analyze the likely effect on nearby areas that will experience growth pressure to accommodate the planned growth that cannot occur under the SQOs. There may also be effects on meeting adopted housing goals, a factor recognized in Water Code section 13241.

9. *Natural Resources. Will the proposal result in:*

- a. *Increase in the rate of use of any natural resources?*
- b. *Substantial depletion of any nonrenewable natural resource?*

New and expanded treatment plants will result in substantial additional demand for fuel or energy.

10. *Risk of Upset. Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?*

Treatment plants will most likely utilize chemicals. For example, disinfection of storm flows may be required in order to comply with the SQOs. There are many forms of disinfection, some of which involve the presence and use of dangerous chemicals (e.g., chlorine). Similarly, if Reverse Osmosis was ever required, it creates brine that must be disposed of and treatment plant upsets could cause dangerous near-shore release of brines.

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11. *Population. Will the proposal alter the location, distribution, density or growth rate of the human population of an area?*

As described above under Growth Inducing Impacts and Land Use, the SED must address the potentially significant effects on population.

12. *Housing. Will the proposal affect existing housing or create a demand for additional housing?*

As described previously, the SED must address the potentially significant effects on housing.

13. *Transportation/Circulation.*

a. *Alterations to present patterns of circulation or movement of people and/or goods?*

The growth pressures on nearby areas will result in changes in circulation patterns as growth is shifted from one location to another location. This impact must be addressed in the SED.

14. *Public Services. Will the proposal have an effect upon or result in a need for new or altered governmental services in any of the following areas:*

- a. *Fire protection?*
- b. *Police protection?*
- c. *Schools?*
- d. *Parks or other recreational facilities?*
- e. *Maintenance of public facilities, including roads?*
- f. *Other governmental services?*

While the Information Document failed to identify methods of compliance to meet SQOs, a possible method of compliance is additional treatment of runoff and discharges. Expanded or additional treatment plants may be required to accept and treat stormwater or other discharges under the proposed SQOs. These plants could have impacts on all of these services. Impacts could arise from locational and land use compatibility issues and from the costs of the treatment plants. Local municipalities and counties have limited (possibly no) ability to obtain additional revenue sources to fund the treatment plants. This could result in the removal of funding from these other services, which could in turn result in physical impacts.

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15. *Energy. Will the proposal result in:*
- a. *Use of substantial amounts of fuel or energy?*
  - b. *Substantial increase in demand upon existing sources of energy or require the development of new sources of energy?*

For both a and b above, the potential new and expanded treatment plants will result in substantial additional demand for fuel or energy, and may require the development of new sources of energy.

16. *Utilities. Will the proposal result in a need for new systems or substantial alterations to the following utilities:*
- a. *Power or natural gas?*

The potential new and expanded treatment plants could result in substantial additional demand for power or natural gas.

Existing systems may need to be substantially expanded and re-piped to meet potential new requirements. Construction of new systems could result in many and varied physical impacts.

18. *Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public or will the proposal result in the creation of an aesthetically offensive site open to public view?*

Numerous large collection and treatment facilities may be necessary to respond to these SQOs. These facilities may have aesthetic impacts, including impacts on the public's views of bays and estuaries.

19. *Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?*

There may be limited land available for the placement of collection and treatment facilities. This may result in existing or potential coastal recreation land being used for storm water treatment facilities.

#### **IV. CONCLUSION.**

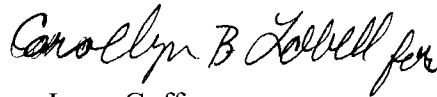
As shown from these specific comments, the potential environmental impacts of the proposed SQOs, including foreseeable methods of compliance with those SQOs, to the extent they can be determined based on the Information Document, are extensive and far-reaching.

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The following actions will be critical to proper evaluation of the environmental impacts of the proposed SQOs.

- o The SWRCB should prepare and publish a comprehensive project description, including reasonable foreseeable methods of compliance.
- o The SWRCB should assure that the SED identify and describes the baseline conditions against which impacts of the proposed SQOs will be evaluated.
- o The SWRCB should analyze all environmental impacts that are likely to result from the proposed project, including the impacts of methods of compliance that will be mandated by adoption of the proposed SQOs.
- o The SWRCB should formulate and adopt mitigation measures necessary to mitigate significant impacts to a level of insignificance, or adopt other alternative SQOs with less than significant impacts.

Very truly yours,



Mary Lynn Coffee  
for NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

CBL/lhh