ORANGE UNIFIED SCHOOL DISTRICT

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Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

The Orange Unified School District applauds the efforts of the State Water Resources Control Board (SWRCB) for seeking public comment into the policies that will ultimately lead to regulations that will improve water quality in the bays, lakes, beaches and rivers in California. The educational community would like to be a partner with the SWRCB to improve water quality in California. However, the April 22, 2009, revised Draft Storm Water Construction General Permit (Draft Permit) proposed by the SWRCB is on a fiscal collision course with our plan to provide high quality education to our students.

We are concerned that the 39 school and community college districts that gave comments and recommendations regarding issues with the originally proposed Draft Permit (issued in March 2008) did not have a single recommendation included in the revised Draft Permit. It is important that the SWRCB understands that the Draft Permit, in its current revision, creates many problems for education and fundamentally pits the immediate, and long-term, needs of education against the protection of the environment.

We respectfully request the SWRCB to consider our concerns below and to address our problems through revisions to the revised Permit, as follows.

Fiscal Impact

No federal or state agencies will be providing funding to implement this Draft Permit. Therefore, every dollar spent for storm water compliance will require one dollar to be taken away from educating children. Moreover, the educational community expects a shrinking share of state revenues available for public education and is bracing itself for a combined $5.6 billion additional budget reduction spread over 2008-09 and 2009-10.

Statewide, 30,000 teachers received lay off notices in the last three months and summer school has been cancelled or reduced in almost two thirds of school districts in California. Many school districts have eliminated their music and arts programs and have dramatically reduced their maintenance and operations programs.

Many of the 27 school districts in Orange County are taking precautionary measures in addressing cash flow needs as the State imposes deferrals to school apportionment funding. If we cannot afford to pay for our teachers and maintain our schools; how can we afford to pay for new storm water regulations?

Projects Already in Process

There are over 1,000 plus school construction projects in various stages of the state approval process that do not include funding for this level of permit compliance, or that would have to be redesigned to comply with the revised Draft Permit post construction hydromodification requirement.

New regulations, governing construction projects, usually contain a "grandfathering" exemption so that construction projects do not have to be redesigned to meet requirements that did not exist at the time of state agency approval, and state funded projects that have received their "full and final" apportionment do not have to be abandoned or delayed because funds are insufficient to complete the project.

Without a "grandfathering" exemption for projects already in progress, millions of dollars will be spent in redesigning construction projects, school construction will be dramatically delayed, and many projects will be abandoned or scaled back until additional funding is obtained to pay for the increased project cost resulting from the revised Draft Permit requirements.

Prior Treatment for Small MS4 Permit

The SWRCB recognized the uniqueness of educational agencies in the revision of the Small Municipal Separate Storm Sewer Systems General Permit when this permit was revised in 2003. Special consideration and exemptions were granted to school and community college districts because of their unique circumstances. Educational agencies have not changed their uniqueness. Moreover, education is willing to work with the SWRCB to implement the most beneficial revisions, e.g. having education play a major role in Water Quality Education. The educational community would like to partner with the SWRCB in the public education of storm water problems. However, the SWRCB must continue to recognize that educational agencies are "Non-Traditional" permitees, and are not major polluters and must be treated differently.

Regional Board Authority

The education community already has four State agencies: the Division of the State Architect; the Office of Public School Construction; the California Department of Education; and the Department of Toxic Substance Control reviewing its construction design plans. Adding the regional boards as a fifth review agency does not make logical sense. It is more economical and practical to have one of the existing four agencies perform storm water compliance review. This concern is especially relevant now because of the state economy and the projected reductions in staff of state agencies. It is not realistic to assume regional boards will be fully staffed to perform this function.

Moreover, educational agencies are fearful of regional boards mandating regulations more stringent than the intent of the SWRCB. While school districts can always appeal to the SWRCB regarding perceived unfair actions of a regional board, school districts do not have the

time, staff, or resources to perform this function. The revised Draft Permit must contain some provision to address these issues, including consideration of reorganizing the regional boards to include a member of the SWRCB, as proposed by the Little Hoover Commission in January 2009.

Reasonableness and Economic Considerations

A lawsuit was successfully filed against the SWRCB and the Los Angeles Regional Board seeking nullification of the Los Angeles Regional Basin Plan (Basin Plan). The court invalidated the Basin Plan and concluded that the regional board was required to consider: (1) the reasonableness of the water quality standards as applied to storm water, and (2) the economic considerations and other factors set forth in Water Code § 13241. The revised permit does not seem to fully consider the intent of these two directives.

Impact of Recession

California is in the middle of a recession, educational agencies and state agencies that are dependent on the state for funding are reducing staff and services because of the anticipated state revenue shortfall. School districts cannot afford to comply with the new requirements of the revised Draft Permit. We question whether the SWRCB and regional boards can staff up to comply with the processing requirements of the revised Draft Permit. We believe passage of this permit is setting up school and community college districts, the SWRCB, and regional boards to fail because all governmental agencies will have their resources reduced and cannot absorb the additional work generated by the revised Draft Permit requirements.

Questions regarding this letter may be made to me via telephone at 714.628.4500 or via e-mail at facilitiesandplanning@orangeusd.org

Sincerely,

Kevin Emenaker
Director, Facilities and Planning

cc: Mr. Charles R. Hoppin, Chair, SWRCB
Ms. Frances Spivy-Weber, Vice Chair, SWRCB
Mr. Arthur G, Baggett, Jr., Member, SWRCB
Ms. Tam M. Doduc, Member, SWRCB
Ms. Dorothy R. Rice, Executive Director, SWRCB
Ms. Andrea Sullivan, Orange County Department of Education