Tri-TAC
Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

Reply to: **P.O. Box 4998**
Whittier, CA 90607

February 6,2004

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Chairman Baggett:

Comments on Scoping of Proposed Amendments
to the California Ocean Plan

The following comments are submitted on behalf of Tri-TAC and the California Association of Sanitation Agencies (CASA). CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California. We appreciated the opportunity to provide comments to the State Water Resources Control Board (SWRCB) staff at the January 23, 2004 scoping meeting relating to the development of the functional equivalent document (FED).

We understand that the SWRCB also accepted public comment on this item at the February 3, 2004 Board Workshop. While we were unable to attend that session, we understand that a variety of points of view were expressed, including some who questioned whether the SWRCB should even proceed forward with the proposed amendments to the California Ocean Plan. CASA and Tri-TAC would like to voice our support for the SWRCB staffs work on these issues to date, and recommend that the SWRCB continue to work on the four issues identified in the December 2003 Informational Document distributed to the public. Following up on the comments we made at the January 23rd scoping meeting, we offer the following specific comments that pertain to each issue.

Proposed Ocean Plan Amendment #1: Choice of bacteria indicator organisms for water-contact bacterial standards.

We recognize that the SWRCB is seeking to satisfy a number of concerns with its proposal, including consistency with the Department of Health Services Beach Sanitation Standards and the Los Angeles Regional Water Quality Control Board Rec-1 standards, as well as the recommendations of the U.S. Environmental Protection Agency to adopt E. coli or enterococci as indicator organisms. However, the implementation of this approach should be studied carefully in the development of the FED.

The SWRCB staff should evaluate carefully how the three indicator organisms, when evaluated under the proposed long-term average, work to demonstrate whether or not a water-body supports water contact recreation. In particular, to what extent are any or all of the indicators predictive of future water quality? How does this predictability compare with other factors such as rainfall, dry-weather urban runoff, and sewage spills? Are one or more indicators sufficient to demonstrate compliance with water quality standards? We recommend that you review the work of the Southern California Coastal Water Research Project (SCCWRP) in evaluating the usefulness of these indicators individually and in various combinations.

We have concerns that the monitoring for all three indicators at all times may be both expensive and unnecessary when coupled with other information about particular waterbodies. The FED should evaluate alternatives such as reduced maintenance monitoring for waterbodies that have demonstrated at least seasonal compliance with water quality standards and the use of warnings against swimming for waters known to be contaminated.

We strongly support the deletion of single sample standards and evaluation of compliance using long-term averages of indicator bacteria densities. This change is consistent with recent scientific information, which suggests that concentrations of indicator bacteria can vary greatly over short time-scales and distances. It is also consistent with EPA's November 2003 draft guidance *(Implementation Guidance for Ambient Water Quality Criteria for Bacteria)*, which also recommends the use of long-term averages to evaluate compliance and risks to human health.

We strongly oppose mandatory across-the-board daily resampling for indicators when monitoring results exceed water quality standards. This is both expensive and impractical. Because there is an 18 to 48-hour turnaround time for the laboratory results, it is not logical to conduct repeat sampling daily, particularly for some locations, such as stormdrain outlets to ocean waters, that are known areas of contamination. Also, episodic instances of contamination, such as those that occur with rain events, produce predictable and repeatable elevated levels of indicator bacteria. Monitoring programs should allow the flexibility to take these events and site-specific features into account.

In light of the potential expense associated with complying with the bacteria water quality objectives contained in the proposed amendment, we note that the SWRCB is required to conduct the analyses required pursuant to California Water Code Sections 13241 and 13242, with particular emphasis on the costs of compliance and the actions to be taken by each entity, public and private, to achieve compliance. One approach that could be taken

to reasonably balance the costs of compliance with the water quality (and human health) benefits would be to define an allowable level of exceedance based upon analyses of economic and other impacts. For example, a short-term high-flow exception could be defined, whereby high flow volumes resulting from storms – which would be very costly to collect and treat – would be allowed to exceed the objectives. This approach has been adopted by the Los Angeles Regional Board for inland waters, and should be considered in this context as well.

Proposed Ocean Plan Amendment #2: Adoption of fecal coliform standard for shellfish harvesting areas.

This proposed amendment is consistent with DHS (1992) recommendations, with the National Shellfish Sanitation Program (NSSP) guidelines for commercial shellfish growing areas, and with recreational and commercial shellfish growing water requirements of other coastal states and with California's regulations for commercial shellfish growing waters. It is also consistent with EPA guidance (draft November 2003).

The SWRCB should clarify the time period for reporting and evaluating compliance with the 10% guideline, using a long-term average such as a 60-day average. We do not support the use of single sample standards. Regarding implementation, we recommend that the SWRCB require the RWQCBs to identify and document in Basin Plans the location and seasonality of actual shellfish harvesting pursuant to the existing Ocean Plan provision that states, "At all areas where shellfish may be harvested for human consumption, as determined by the Regional Board, the following objectives shall be maintained throughout the water column: . . ."

As with the choice of bacteria indicator organisms for water-contact bacterial standards, the proposed amendment must be analyzed in accordance with the requirements of the California Water Code Sections 13241 and 13242, particularly with respect to the actions that would be required to comply with the proposed objective.

Proposed Ocean Plan Amendment #3: Reclassifying "Areas of Special Biological Significance (ASBS)" to "State Water Quality Protection Areas (SWQPAs)" and establishing implementation provisions for discharge into SWQPAs

CASA and Tri-TAC appreciate the staffs efforts to comply with the Marine Managed Areas Improvement Act (MMAIA), which was enacted in 2000, by updating the aspects of the California Ocean Plan having to do with Areas of Special Biological Significance (ASBS). As noted in the Informational Document, any marine managed area in existence on January 1, 2002 is required to be reclassified using the classification system included in the MMAIA by January 1,2003. Cal. Public Resources Code § 36750. Thus, we agree that the SWRCB must rename ASBS to State Water Quality Protection Areas (SWQPA). Additionally, we agree that the SWRCB must develop definitions of the terms "limited by special conditions" and "controlled to the extent practicable," and that it is appropriate for those definitions to be included within the California Ocean Plan. We disagree with comments that have been made by others suggesting that these changes are unnecessary and perhaps even illegal. Inclusion of these changes in a State Water Quality Control Plan

or Policy, however, does trigger requirements contained in Sections 13240-13244 of the California Water Code.

We support the staff recommendation regarding non-stormwater point source discharges. We also recognize the need to consider and address the potential impacts of stormwater and nonpoint source discharges. However, as noted above, any requirements imposed upon these discharges must be subject to the required California Water Code Section 13241 and 13242 analyses. Given the potential for significant impacts, it is especially important that meaningful analyses of the economic impacts, impacts to housing and impacts on the use of recycled water be conducted. SWRCB should identify the implementation actions that would be required by various entities to comply with the proposed amendment, and address whether these actions are reasonably achievable.

Regarding the proposal to require a greater level of monitoring for discharges to SWQPAs, we support this conceptually. However, we do not believe that monitoring for all Table B constituents is necessary or useful. Either a reasonable potential analysis or other evaluation of the discharge should be conducted to determine those constituents that should be analyzed. Also, muscle or sand crab tissue will not occur in all habitats. Other options should be selected on a site-specific basis.

Proposed Ocean Plan Amendment #4: Define "reasonable potential" calculations to determine when water quality-based effluent limitations would be required.

This proposed amendment would remove existing Ocean Plan language allowing dischargers to certify that "Table B" pollutants are not present in their effluent in lieu of monitoring. New "reasonable potential" language would be substituted, and water quality based-effluent limitations would be required to be added to permits for constituents demonstrating a "reasonable potential" to cause an exceedance of a water quality criterion. The proposed amendment would utilize a lognormal tolerance interval-based procedure, provide procedures for evaluating reasonable potential with highly censored datasets (e.g., data sets with limits of detection greater than the water quality criteria), and recommend use of a computer software program (RPCalc) currently under development by the SWRCB.

In those cases where "reasonable potential" does apply, we support the development of a reasonable potential evaluation procedure that is founded on solid scientific and statistical principles. We request that the SWRCB perform additional evaluations of the impacts of this proposed amendment using a variety of real data sets. We would be happy to assist the SWRCB in identifying appropriate POTW ocean discharge permit-holders and datasets for use in such an evaluation. We also request that the SWRCB specify that Ocean Plan criteria are to be evaluated using the appropriate averaging periods when assessing reasonable potential, and that the SWRCB identify any increased monitoring burdens that may result from this proposed Ocean Plan amendment.

We would like to raise one additional issue not identified in the Information Document. Our members have discovered a problem with implementation of the California Ocean Plan. Some Table B constituents, including alpha and gamma chlordane, no longer have commercially available standards. Despite repeated attempts to obtain the standards both nationally and internationally, it is clear that it is not possible to purchase these

substances. These standards are necessary to properly complete the laboratory analysis for these constituents. We ask that the SWRCB staff to evaluate deleting these constituents from Table B definitions or to develop a new method of implementation for these constituents.

Thank you for the opportunity to submit comments on the scoping of these Ocean Plan Amendments. We would be glad to meet with you to discuss any of these comments or other issues related to the Ocean Plan. Please contact me, at the number above, or Jim Colston, at (714) 593-7458, if you would like to discuss our comments further.

Sincerely,

Sharon N. Green

Sharon N. Green, Chair
Tri-TAC

Roberta Larson SG

Roberta Larson, Director of Legal and
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California Association of Sanitation Agencies

cc: SWRCB members
Frank Palmer, Division of Water Quality
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