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May 12, 2011

Mary Fiore-Wagner  
Environmental Scientist  
Lahontan Water Board  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

Dear Ms. Fiore-Wagner:

Re: Draft Pesticide Basin Plan Amendment, Lahontan Region (Region 6)

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the Draft Pesticide Basin Plan Amendment for the Lahontan Region (Region 6) Basin Plan. LADWP supports the proposed Amendment and applauds the Lahontan Region staff (staff) for developing an approach that recognizes and facilitates pesticide applications for beneficial purposes. LADWP concurs with all elements of the proposed Amendment described in Section I., items A., B., C., and D. below.

**I. A. LADWP Supports the “Waste Discharge Prohibition With Criteria for Exemption” Alternative to the Basin Plan’s Current Water Quality Objective**

As discussed at the meeting/conference call held May 2, 2011, the purpose of the proposed amendment is to address and remedy the Basin Plan’s (Plan’s) current Water Quality Objective, found on Pages 3-5 of the Plan: “Pesticide concentrations, individually or collectively, shall not exceed the lowest detectable levels, using the most recent detection procedures available. There shall not be an increase in pesticide concentrations found in bottom sediments. There shall be no detectable increase in bioaccumulation of pesticides in aquatic life.” As discussed by staff, the current water quality objective does not easily facilitate the use of pesticides to protect human health, or for ecological preservation, vector control, or emergency situations.

Therefore, LADWP supports the staff selection – Waste Discharge Prohibition With Criteria for Exemption - as the appropriate alternative to the current water quality objective, as was presented in Slide 4 of the “Pesticide Basin Plan Amendment Presentation” by Dan Sussman and Mary Fiore-Wagner, Environmental Scientists; and

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Richard Booth, Senior Engineering Geologist). LADWP concurs with the staff that the other alternatives - no action, or chemical specific numeric water quality objectives, would prove problematic.

#### **B. LADWP Supports Eligible Circumstances Approach to Pesticide Applications**

LADWP strongly supports the "eligible circumstances" for waste discharge exemptions, namely public health and safety, and ecological preservation (as per Slide 6 of the "Pesticide Basin Plan Amendment Presentation.") This approach will enable entities such as LADWP to apply pesticides to 1) meet drinking water standards and therefore guard public health; 2) control algae that may not endanger public health but causes odors in drinking water; 3) control aquatic weeds that could impair critical and expensive water conveyances or distributaries ; and 4) repel invasive aquatic species that endanger habitats and native species, and/or water conveyances or distributaries. The protection measures applicable to pesticide applications, as described on Page 4, in the "Purpose and Need for Exemption" section of the Draft Pesticide Basin Plan Amendment (application methods, compliance with pesticide label instructions, implementation of best management practices), are appropriate and will ensure that any lowering of water quality is limited to the shortest time possible.

#### **C. LADWP Supports Discharge Prohibition Exemption Process**

LADWP believes that the general exemption process that would allow such applications, as described in Slide 8 of the "Pesticide Basin Plan Amendment Presentation" is stream-lined and clear. LADWP appreciates that the need for accelerated exemptions – for vector control and in response to emergency situations, such as when toxic algae develops, has been considered and included.

#### **D. LADWP Supports Development of a Discharge Exemption Application Form**

During the May 2 meeting/conference call, staff said that a discharge exemption application form has not yet been developed. LADWP supports development of this form, in order to streamline the exemption process and help ensure that applicants provide all necessary information.

The following items address those issues where LADWP has concerns.

### **II. Pesticide Applications Under Dry Conditions**

A. The Item that will be numbered as "6" in Section 4.1, now presented on Page 2 of the Amendment states: "The discharge of pesticides to surface or ground waters is prohibited.<sup>1</sup>" The referenced footnote (No. 1), which is found on the same page, reads: "Compliance with this prohibition will be assessed or measured by evidence of pesticide application to *liquid water* (emphasis added) or by analyzing water samples (from either surface or ground waters) for the presence of pesticides. Therefore, proper application or terrestrial pesticides directly to plants or animals located in a surface water (as defined by the Water Code) *under dry conditions* (emphasis added) should not result in

a violation of the prohibition, nor require the Regional Water Board to consider exemptions to the prohibition.”

LADWP believes that even though this footnote is detailed, the potential for confusion about the scope of dry conditions and exemption procedures still exists.

**Recommendation:**

Given the significance of “dry conditions” in California, and the need for absolute clarity, LADWP recommends that the footnote referenced above be revised and expanded as follows: “

“Compliance with this prohibition will be assessed or measured by evidence of pesticide application to *liquid water* (emphasis added) or by analyzing water samples (from either surface or ground waters) for the presence of pesticides. Therefore, proper application or terrestrial pesticides directly to plants or animals located in a surface water (as defined by the Water Code) *under dry conditions* should not 1) result in a violation of the prohibition, 2) should not require that the pesticide applicator submit to the Regional Board an application for a waste discharge exemption; and 3) should not require that the Regional Water Board issue an exemption to the discharge prohibition. As an example, the application of terrestrial pesticides to the dry stream beds of *ephemeral streams* would not require that a discharge exemption be obtained, because the lack of “liquid water” in the ephemeral stream bed constitutes a ‘dry condition’.”

LADWP also recommends that the above language be presented more prominently, by means of a new Amendment Section titled “Categorical Exemptions.”

**III. Pesticide Applications Adjacent to Surface Waters**

As discussed during the May 2 meeting, the ‘proper application’ of pesticides includes, at minimum, application in accordance with the pesticide label and the use of best management practices (BMPs) that are sufficient to prevent overspray, drift, and runoff to liquid surface waters.”

It is unclear whether the application of terrestrial pesticides *adjacent* to surface waters (such as along canals, to kill weeds and help maintain structural stability), if applied in accordance with the label, and when all protective measures, such as necessary Best Management Practices (BMPs), are in place, would or would not require the applicator to apply for a discharge exemption.

**Recommendation:**

LADWP therefore recommends that the Amendment address this issue more clearly with a Section titled “Pesticide Applications Adjacent to Surface Water” that reads: “Pesticide applications to land that is adjacent to surface waters is allowed, provided that the applicator, at minimum, applies the pesticides in accordance with the pesticide label and employs best management practices (BMPs) that are sufficient to prevent

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overspray, drift, and runoff to liquid surface waters. Compliance with the prohibition of the discharge of pesticides to surface or ground waters will be assessed or measured by evidence of pesticide application *to liquid water* or by analyzing water samples (from either surface or ground waters) for the presence of pesticides.”

Thank you for this opportunity to provide comments. Should you have any questions regarding this letter, please contact Ms. Jennifer Pinkerton of the Wastewater Quality and Compliance Group at (213) 367-4230.

Sincerely,



Katherine Rubin

Manager of Wastewater Quality and Compliance

JP:db

c Daniel Sussman, Lahontan Water Board

c: Ms. Jennifer Pinkerton