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June 18, 2008

Tam Doduc, Chair and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Via Electronic Mail: commentletters@waterboards.ca.gov

Re: Strategic Plan Update 2008-2012: May 30, 2008 Draft

Dear Chair Doduc and State Board Members:

On behalf of the California Coastkeeper Alliance (CCKA), representing 12 Waterkeepers spanning the coast from the Oregon border to San Diego, thank you for the opportunity to submit these comments on the May 30th draft of the "Strategic Plan Update 2008-2012" (Strategic Plan). CCKA and its member Waterkeepers appreciate the significant amount of work that Board members and staff have devoted to developing a Strategic Plan that ideally will lead to measureable progress toward clean, abundant water and healthy waterways throughout California. The Strategic Plan makes significant and necessary steps forward in this regard by making important links between water quality and water supply, links that are essential to ensuring that California's waterways are fully protected for their own benefit and the associated benefit of all Californians.

Because of the enormous threats that California's waters now face because of climate change and other stressors, however, additional bold, measureable action is needed. In particular, actions that go well beyond planning and process modifications need to be articulated and implemented. We provide below several specific, recommended changes in key areas that will help improve the success of the Strategic Plan in providing both immediate and long-term protections needed to ensure the health of California's waterways.

Vision and Mission

The vision and mission for an organization are the foundation upon which all of its operations are built. They should be considered carefully to ensure that they fully support the organization's achievement of its own goals, and that they do not limit unnecessarily the strategies or actions open to the organization.

By limiting the Water Boards' activities to "resource" protection, the vision and mission proposed in the current Strategic Plan only consider the health of the waterways as they pertain to

their utility to humans, rather than something of broader and inherent value. As a result, the proposed vision and mission limit the ability of the State and Regional Boards to fully protect the health of California's waters. To correct this limitation and provide a broader foundation for the Water Boards' work, we propose the following edits:

Vision

A sustainable California made possible by clean water and water availability for both human uses and environmental protection.

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Mission Statement

To preserve, enhance, and restore the quality of California's waters and waterways, and ensure their proper allocation, efficient use and continued health, for the benefit of present and future generations.

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Priority 1: Protect and Restore Surface Water Quality

We support the goal of having "all 2006-listed water bodies on track to fully support beneficial uses by 2030." This is a specific, measurable goal that is designed to achieve clean water directly, rather than merely indirectly through process improvements. However, in light of the difficulties the 303(d) process has faced to date in actually cleaning up waterways through the load reduction process (*i.e.*, as opposed to downgrading uses or outright banning the constituents at issue), clear, aggressive objectives and actions are needed to achieve this goal. It is unclear how the objectives and actions outlined in the Strategic Plan will actually achieve this water quality goal. Rather, they are more geared toward process improvements that may or may not lead to waters fully supporting beneficial uses.

There are numerous paths that the Water Boards could take to achieve the goal of "all 2006-listed water bodies on track to fully support beneficial uses by 2030" with more measurable certainty than is currently described. While we might support other specific actions not articulated here, we believe that the following edits would be particularly necessary in this regard:

Objective 1.1, Action 1.1.4. The State Water Board and Regional Boards will adopt and implement, beginning January 2009, water quantity factors in TMDLs and in water rights decisions where full TMDL implementation will not achieve water quality standards without flow augmentation.

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Objective 1.1, Action 1.1.5. Identify, document and commence implementation and enforcement of, beginning in January 2009, implementation strategies with broad application that can be applied through policies and permits to restore water quality, and that may eliminate the need to develop a TMDL. These shall include, by February 2010, adoption of waste discharge requirements for irrigated agriculture that implement necessary pollutant load reductions into impaired waters from agricultural runoff. These shall also include adoption of numeric effluent limitations in both the construction (by December 2008) and industrial (by December 2009) stormwater permits that lead to full support of beneficial uses in affected waterways by 2030.

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Objective 1.2, Action 1.2.4. By 2010, update and standardize coastal municipal storm water

permits to reduce dry weather beach postings by 100% by 2013 and reduce wet weather beach postings by 75% by 2020 by: (a) adopting TMDLs for all beach bacteria impairments listed on the 2006 303(d) list by 2010, (b) incorporating TMDL loads into the permits as soon as the loads are adopted, and (c) incorporating maximum extent practicable (MEP) technology requirements into all applicable permits to achieve adopted TMDL loads.

Objective 1.2, Action 1.2.5. [NEW] Require standardized monitoring in all coastal municipal stormwater permits and post monitoring data on the State Water Board's website.

Objective 1.2, Action 1.4.2. The Water Boards will work collaboratively to pilot enforcement programs and other innovative approaches to protect and restore surface water quality, initially focusing on ensuring compliance with the regulatory programs for irrigated agriculture.

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Priority 2. Protect and Restore Groundwater Quality

While the priority of protecting groundwater quality is necessary and we support it, the goal statement is neither specific nor measurable enough to guide objectives and actions. Given the recent drought announcement by the Governor and his call for significantly enhanced funding for groundwater protection,¹ now is the time to act boldly and assertively to protect California's groundwater. We suggest the following changes to provide clearer direction for action:

Goal 2. Develop and begin implementation of innovative strategies by January 2009 to fully protect groundwater quality, consistent with beneficial uses, in high use basins by 2020, and in all basins by 2030.

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Objective 2.1 would need to be changed accordingly to reflect this goal. Further, the actions supporting Objective 2.1 focus on planning and process, and so are insufficient to improve and protect groundwater quality. In particular, there is no clear direction to regulate discharges to groundwater, a basic requirement of Porter-Cologne that has yet to be implemented. Without a clear commitment to implement the law in full, the state's groundwater will continue to degrade. Moreover, the proposed actions only address regulation in the context of degradation; no mention is made of protecting the quality of cleaner groundwater basins.

Accordingly, we recommend the following changes to Action 2.1.4:

Objective 2.1, Action 2.1.4. The Regional Water Boards will fully regulate discharges to groundwater to protect and enhance groundwater quality, in accordance with Porter-Cologne. Discharges to groundwater from irrigated agriculture shall be regulated, with specific, substantive controls placed on pollutant releases, throughout the state by December 2009. Priority for regulation of groundwater discharges in general will be placed first on high use basins, and then to all other basins in the state, with needed regulations and permit controls in place by December 2012.

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¹ <http://gov.ca.gov/index.php?/press-release/9796/> (“\$1.1 billion for efforts to reduce the contamination of groundwater”).

Finally, as clarification, Action 2.1.4 of Objective 2.1 goes beyond Objective 2.3, which focuses on groundwater as used for drinking water supplies. To make this distinction more clear and ensure that drinking water is fully protected, Action 2.3.1 should be expanded to address all facilities as needed, and revised to refer to drinking water, consistent with Objective 2.3:

Objective 2.3, Action 2.3.1. Issue new or revised WDRs, based on threat to groundwater quality and complexity of facility, as necessary to protect groundwater quality for use as high quality drinking water supplies.

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Priority 3. Promote Sustainable Water Supplies

As we have articulated repeatedly throughout the public process for the State Board's Recycled Water Policy, the sustainability of the state's water supplies depends directly on protection of the health of existing water supplies. Reducing pollution to both surface water and groundwater, as described above, is essential to this effort. So, too, is using recycled water in a way that protects the quality of existing surface water and groundwater. We therefore offer the following suggested amendment to the Goal for this Priority:

Goal 3. Increase sustainable water supplies available to meet existing and future beneficial uses by 1,725,000 acre-feet per year, in excess of 2002 levels, by 2015, consistent with state and federal water quality law requirements to protect the health of the state's waters.

We also question the ability of the existing draft Strategic Plan to actually implement the revised Goal described above given its paucity of specific, measurable requirements. In particular, Objective 3.2 fails to lay out a plan to ensure the desired public acceptance of recycled water use by failing to emphasize the use of recycled water consistent with water quality objectives and evolving information on emerging contaminants. Only clear action to protect public health and the environment will ensure that the state provides the factual support needed for the desired public acceptance of recycled water use.

In addition, the state fails to take an opportunity to further promote public acceptance of recycled water by tying increases in recycled water use with conservation of potable water use. One significant public concern with recycled water use is that it will facilitate unsustainable growth patterns. By addressing this concern directly, the state can increase the desired level of public acceptance even further.

Accordingly, we recommend the following changes to Objective 3.2 and its accompanying Actions:

Objective 3.2. Promote the use of recycled water and the reuse of stormwater as locally available and sustainable water supplies, consistent with state and federal water quality law requirements and evolving information on emerging contaminants.

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Objective 3.2, Action 3.2.3. Revise funding criteria, where allowable, to ensure that grant and loan projects funded by the Water Boards support activities that enhance water reuse, water recycling, and groundwater recharge, consistent with state and federal water quality law requirements to protect the health of the state's waters. Priority shall be given to

those projects that demonstrate that they will reduce the current level of potable water use in the area affected.

Advancing Organizational Performance

Transparency and Accountability

We agree with transparency and accountability are essential components of any successful waterway protection program. This is particularly true in California, which is unique in that the EPA-delegated Clean Water Act regulatory entity – the State Water Board – further delegates significant responsibilities to nine Regional Water Boards, with no corresponding level of accountability to the public. The relative lack of accountability created by this delegation requires a corresponding increase in transparency, one that is not evident in the current version of the Strategic Plan. The Regional Water Boards' individual operations should be daylighted to allow for appropriate changes in process and budget where needed to protect the overall health of California's waters and waterways.

The relative lack of accountability mechanisms should also be addressed through increased use of tools such as numeric effluent limits in permits, which provide more accountability in terms of implementation and enforcement.

To these ends, we recommend the following changes:

Action 5.1.1. Prepare by December 2008 a documented inventory of Water Board programs and functions, including where and how all resources and budgets are assigned to and from each of the Regions and the State Water Board, to establish a baseline for determining changes that are needed to improve effectiveness and efficiency, beginning with the enforcement program. Post this information on the State Water Board website with links to each of the Regions.

Action 5.1.2. Link existing Regional and State Water Board budgets and workplans to the development of performance-based budgets and plans by 2010 that include goals and priorities, measures with targets, demonstration of results, and methods for the evaluation of strategies, beginning with the enforcement program. Post this information on the State Water Board website with links to each of the Regions.

Action 5.1.3. Evaluate, reengineer, and implement improvements to State and Regional Water Board processes, beginning with (a) a comprehensive evaluation of process and timelines by December 2008 as a first step in streamlining the water rights application processing, and (b) the formats and processes of State and Regional Water Board NPDES and other permitting programs by December 2009, resulting in permits that allow for readily identified violations and prompt enforcement actions. This process shall include specific recommendations with respect to increased use of numeric effluent limitations to streamline enforcement, consistent with the Cal-EPA Enforcement Initiative.

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Consistency

It has been our unfortunate experience that when the issue of “consistency” is raised, it generally arises in the context of the regulated community seeking the weaker controls implemented by some regions, rather than the stronger controls implemented by others. The environmental community in large part has not sought consistency for consistency’s sake, but rather to bring up those Regional Water Boards that have actually flouted the law to a basic level of compliance. One recent example is the Compliance Schedule Policy, necessitated by Region 2’s clear violations of the law, as concluded by U.S. EPA in its review of Region 2’s procedures.² Unfortunately, the State Water Board’s adopted Compliance Schedule Policy grandfathered in all issued compliance schedules, including those deemed illegal. This creates the perverse incentive of rewarding illegal behavior and discouraging appropriate actions by those Regional Water Boards who follow the law.

The State and Regional Water Boards’ clients are the public and the waterways of California. Their clients are not the regulated community. This perspective frequently gets lost in light of the constant pressure by those being regulated for reduced requirements. Yet the State and Regional Boards cannot lose sight of their actual mission, which is to preserve, enhance, and restore the quality of California’s waters and waterways. Any consistency reforms must first and foremost have this goal in mind. As currently drafted, that is not the case. Accordingly, we recommend the following amendments:

Goal 6. Enhance consistency across the Water Boards, on an ongoing basis, to ensure all of the waters of the state achieve beneficial uses through full, fair and equitable application of the laws, regulations, policies, and procedures, and through effective, efficient, and predictable organizational processes.

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Objective 6.1. Target consistency improvements in process and policy for Water Board enforcement activities to ensure full compliance with the law statewide.

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application of the laws, regulations, policies, and procedures.

Action 6.1.3. Complete re-organization/re-direction of staff to separate enforcement personnel from permitting personnel by December 2009, and instill internal process for review of draft WDRs and waivers of WDRs for enforceability beginning in September 2008.

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Objective 6.2. Target consistency improvements in program delivery identified through past input, and solicit input to identify consistency issues as they arise. The goal of this effort is to maximize the consistency needed to ensure that all of the waters of the state achieve their designated beneficial uses by 2030.

Action 6.2.1. Reissue a statewide storm water permit for Phase II municipal separate storm sewer systems (MS4s) by July 2009 that raises the baseline for consistency in the municipal storm water permitting program to ensure expeditious attainment and maintenance of beneficial uses. The permit should provide a consistent approach as needed to ensure beneficial uses are met, particularly where issues have been raised regarding the Phase I

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² Memorandum from Alexis Strauss, U.S. EPA Region IX to Dorothy Rice, SWRCB *et al*, “California Permit Quality Review: Report on Compliance Schedules” (Oct. 31, 2007) (“For some of the permits ... a compliance schedule was not ‘appropriate’ In those permits ... the facility had already implemented controls sufficient to ... discharge at or below the final limits.... When such steps have already occurred, a compliance schedule is not appropriate.”).

MS4s, including hydromodification and the use of numeric benchmarks, action limits or effluent limitations. As appropriate, solutions developed in reissuing the Phase II permit should be used in Phase I permits around the state in subsequent years to ensure expeditious attainment of beneficial uses. Phase II MS4s serve a population of 100,000 or less that are located in an urbanized area.

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Action 6.2.2. Implement, by July 2009, public participation policies, procedures, or guidelines, as appropriate, to improve public access to Water Board procedures for adopting policies and regulatory actions.

Action 6.2.3. The State and Regional Water Boards will establish as a standing item at its biannual WQCC meetings the identification and prioritization of areas of inconsistency to be addressed, including where statewide policy is needed to ensure that all of the waters of the state achieve beneficial uses by 2030.

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Thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to call.

Best regards,



Linda Sheehan
Executive Director