November 26, 2014

Chair Felicia Marcus and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Sent via electronic mail to: commentletters@waterboards.ca.gov

RE: Comment Letter – Caltrans Prioritized Inventories

Dear Chair Marcus and Board Members:

On behalf of Heal the Bay and California Coastkeeper Alliance, we welcome the opportunity to submit comments on the prioritized categorical inventories of reaches for Total Maximum Daily Loads (TMDL) in the amended Statewide National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Runoff from the California Department of Transportation's (Department) Municipal Separate Storm Sewer System (MS4) (Order WQ 2014-0077-DWQ) ("Final Permit"). Our organizations have been actively involved throughout California in ensuring the control of stormwater pollution generally, and the Department's pollution in particular, for many years. We have significant interest in the prioritization of the Department's TMDLs to ensure all waste load allocations (WLAs) are being met in a timely fashion.

The Final Permit gives specific direction to the Department, State Water Board, and Regional Water Boards for TMDL prioritization and implementation of source control measures and best management practices (BMPs). The Department is required to engage in the following five steps:

1) Complete an inventory of reaches.
2) Segregate the inventory of reaches according to the pollutant categories listed in Section III, B through I (Categorical Inventory of Reaches) of the Final Permit.
3) Rank the reaches in each TMDL category in accordance with a procedure similar to that presented in Table IV.1 of the Final Permit.
4) Submit initial prioritized categorical inventories of reaches to the State Water Board by October 1, 2014 for State Water Board and Regional Water Boards consideration. Caltrans' prioritized categorical inventories of reaches will be subject to a 30-day public comment period.
5) The Department shall collaborate with the State Water Board and Regional Water Boards on final prioritization of categorical inventories of reaches considering opportunities for synergistic benefits with existing and anticipated projects, multiple TMDLs addressed by a single or suite of BMPs, TMDL deadlines, State Water Board and Regional Water Board priorities, accessibility of construction and maintenance, and multi-benefit projects that provide benefits in addition to water quality improvements.[1]

The initial prioritized categorical inventories of reaches for TMDLs ("Initial Prioritization") submitted by the Department on September 3, 2014 ranks impaired reaches by pollutant categories listed in the Final Permit. In order to effectively prioritize the Department's TMDLs, the State Board should:

[1] *See* Final Permit, pp. 148-153.

- Require the Department to provide TMDL compliance deadlines in Initial Prioritization for public review;
- Require the Department to explain methods used for ranking impaired reaches in Initial Prioritization; and
- Provide a Staff Summary of final TMDL prioritization to be discussed at a Board Hearing and allow for public comment and testimony.

A. THE DEPARTMENT SHOULD PROVIDE THE PUBLIC WITH ITS ADOPTED TMDL COMPLIANCE DEADLINES IN INITIAL PRIORITIZATION TO ALLOW FOR PROPER CATEGORICAL RANKING AND REVIEW.

In order to appropriately prioritize categorical inventories of reaches for TMDLs and allow for adequate public comment, the Department should have included its TMDL deadlines into Initial Prioritization – regardless of whether they are to be considered in Initial Prioritization. This comment period is an opportunity for the public to convey its priorities and identify where the Department's prioritization may be flawed. How can the public convey its priorities when TMDL deadlines are not incorporated into the public process? In our comment letter submitted to the State Water Board March 18th, 2014, we were clear that TMDL deadlines need to be met, and thus should be a primary consideration when determining prioritization. Our concern comes from the State Board's compliance unit approach, which does not provide any assurances that waste load allocations (WLAs) will ultimately be met by their specified deadlines. The Clean Water Act requires the State Board to ensure "effluent limits are consistent with the assumptions and requirements of any available waste load allocation for the discharge." [2]

In finalizing TMDL prioritization, the "State Water Board and Regional Water Boards will consider the compliance date for attainment of the WLAs established in the Basin Plans and may adjust the prioritization accordingly. It is the intent of the State Water Board to have the Department meet listed TMDL deadlines where feasible." We appreciate the State Board's intent for compliance deadlines to be a serious consideration in TMDL prioritization. However, the information the Department provided the public in its Initial Prioritization does not include TMDL compliance deadlines. TMDL deadlines are specific WLA requirements and are to be enforced through permit terms – the only assurance that compliance deadlines will be met is the requirement to "consider" compliance deadlines in the final prioritization process. Regretfully, the Department provides no information about compliance deadlines to the public in Initial Prioritization.

<u>The State Board should require the Department to provide the public with its TMDL compliance deadlines in Initial Prioritization, and allow for future public comment on incorporation of TMDL deadlines into the final prioritization process</u>.

B. THE DEPARTMENT SHOULD EXPLAIN HOW ITS PRIORITIZATION WAS DETERMINED.

The Department's Initial Prioritization does not include adequate information for the public to comment on pollutant category rankings. Initial Prioritization references four factors, Table IV.1 of the Final Permit, that were used to prioritize TMDLs; however, it does not provide details about how these factors were specifically applied for ranking (i.e. modeling equations, factor coefficients). The document only states that "[n]umerical ranks were calculated for each factor. Factor ranks were then summed and ranked." What types of quantitative analyses were used to calculate numerical ranks? Did certain factors get weighted more heavily than other? Were any assumptions made in numerical ranking? No supplemental information was provided with the Initial Prioritization document to explain how ranks were calculated. Without this

[2] 40 C.F.R. § 122.44(d)(1)(vii)(B); *Communities*, 1 Cal. Rptr. 3d at 80 (citing 40 C.F.R. § 122.44(d)(1)(vii)(B)).

information, we cannot be certain that TMDL prioritization was done appropriately. Understanding how TMDLs are ranked in each pollutant category is essential for public review and comment.

At this time, we are unable to adequately review the Department's Initial Prioritization due to insufficient information about ranking methodology. The State Water Board should provide the public with a summary explanation of how Initial Prioritization was determined and allow for further public involvement in the TMDL prioritization process.

C. THE STATE BOARD SHOULD PROVIDE BOARD MEMBERS WITH A PUBLIC SUMMARY OF FINAL PRIORITIZATION AND ALLOW FOR PUBLIC COMMENT PRIOR TO EXECUTIVE DIRECTOR APPROVAL.

The State Water Board, Regional Water Boards, and the Department are required to collaborate on final prioritization for each of the categorical inventories of reaches ("Final Prioritization"). Final Prioritization goes beyond factors used for the Department's Initial Prioritization by requiring consideration of synergistic benefits from other projects, multiple TMDLs addressed by a single and/or suite of BMPs, TMDL deadlines, Regional Water Board and State Water Board priorities, accessibility for construction and maintenance, and multiple-benefits in addition to water quality improvements. These considerations are critical to ensure TMDL prioritization is conducted in the public's best interest. However, currently the public is not provided an opportunity to comment on how these considerations were assessed for Final Prioritization.

Only allowing public review and comment of Initial Prioritization is insufficient as this step does not include critical factors such as TMDL deadlines and multi-benefit projects. State Board staff should provide Board members a public summary of Final Prioritization and allow public comment on Final Prioritization before State Water Board Executive Director approval.

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We appreciate the State Water Board's efforts to date, and intent moving forward, to require the Department to achieve on-the-ground water quality improvements. The State Board needs to ensure that the Department is meeting its legal requirements to comply with WLAs in applicable TMDLs. The Initial Prioritization does not contain an adequate level of detail for meaningful public comment. In addition, we are concerned the final prioritization will be conducted without any stakeholder involvement. Lastly, the Initial Prioritization leaves uncertainty regarding whether the Department's prioritization will lead to the timely compliance of TMDLs. We ask that the State Board require the Department to provide more information to the public and allow for further stakeholder involvement in the final prioritization.

We appreciate the opportunity to provide comments. If you have any questions or concerns please contact Heal the Bay or California Coastkeeper Alliance at (310) 451-1500 or (707) 652-5615, respectively.

Sincerely,

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