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Via Email Only

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**Re: SWRCB/OCC FILES A-2236(a) THROUGH (kk)
Comments in Response to Questions Posed by the State Water Resources
Control Board Concerning Receiving Water Limitations**

The San Diego Unified Port District (Port) provides this response to the State Water Resources Control Board (State Board) request for comments regarding the manner in which the receiving water limitations issue is addressed in the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District (LA MS4 Permit). The Port is a permittee under a recently adopted MS4 Permit for the San Diego Region, and potentially faces similar compliance issues regarding numeric receiving water limits. The Port currently has a pending petition before the State Board with regard to some of the terms of its MS4 Permit and the propriety of these numeric limits.

The Port generally supports the contemporaneously submitted comments by the California Stormwater Quality Association (CASQA) regarding the need for an alternative compliance method. In addition to the liability risks noted by CASQA, the Ninth Circuit recently issued a new opinion that further accentuates the liability risks faced by MS4 permittees, particularly with regard to third party suits. (*Natural Resources Defense Council, Inc. v. County of Los Angeles, et al.* (9th Cir. 2013) 2013 DJDAR 10619.

The Port agrees with CASQA that MS4 permittees face a unique challenge with respect to managing flows and discharges that are beyond the permittees immediate control. As such, public policy supports an alternative compliance approach such as that adopted in the LA MS4 Permit. The Port further agrees with CASQA's comment that, while the appropriate

Emel G. Wadhvani

August 15, 2013

Page 2

alternative compliance method may vary from region to region and the State Board need not approve a single method, the State Board should mandate that all MS4 permits contain an alternative pathway for compliance with receiving water limitations rather than a strict numeric limit compliance standard.

The Port thanks the State Board for its consideration on an issue of significant importance to MS4 permittees.

Very truly yours,



Scott E. Patterson

SEP:jd