March 10, 2014

Robert Schlipf
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94590

Via electronic mail to robert.schlipf@waterboards.ca.gov

RE: Comments on Tentative Order for Municipal Wastewater Dischargers of Nutrients to San Francisco Bay, NPDES Permit

Baykeeper is pleased to provide comments on the draft tentative order for issuance of waste discharge requirements for municipal wastewater discharges of nutrients to San Francisco Bay (draft permit). Baykeeper respectfully submits these comments on behalf of our 2,300 members that live, work, and recreate in and around San Francisco Bay. Baykeeper is a 501(c)(3) non-profit organization with the mission of protecting and enhancing water quality of San Francisco Bay for the benefit of its ecosystems and surrounding communities.

Over the last several years Baykeeper has followed the evolving science regarding potential nutrient enrichment of San Francisco Bay-Delta. As participants in the Nutrient Numeric Endpoints process, we appreciate the need to assess the issue and develop measured responses to prevent impairment of beneficial uses. We also appreciate the scale and magnitude of the potential responses, in terms of financial and political challenges, technological uncertainty, and need to balance issues of social equity. Water Board staff deserves credit for addressing this issue of nutrient enrichment with foresight, rather than waiting for acute impairment to trigger a rushed response. We believe staff should, however, take a stronger position in ensuring adequate funding for the nutrient monitoring and science strategy; provide additional guidance to dischargers as they develop management response plans; and commit resources to the identification and removal of institutional barriers to reducing nutrient loads while achieving other sustainability goals, such as increased use of recycled water.

The Board has an opportunity with this permit to put into place processes that could drastically improve the health of the Bay, reduce regional reliance on imported water resources, and optimize regulatory assurances with most major dischargers in the region. This is a rare opportunity that is not likely to be replicated for decades. While there will surely be opportunity to negotiate permit terms and treatment approaches at the next permit cycle, we encourage the Board at the outset of the process to stress innovation and radical thinking. The Bay Area is now seriously lagging behind our Southern California counterparts in the areas of water recycling, stormwater capture, and potable reuse. Creation of a holistic response to nutrient enrichment should incorporate these elements to reduce pollutant loading, enhance generation of local water resources, and reduce the uncertainty over future drought response.

FUNDING GAP FOR STUDIES AND STAKEHOLDER COORDINATION MUST BE ADDRESSED

According to the Permit Fact Sheet (Attachment F), the Bay Area Clean Water Agencies (BACWA) has identified $880,000, annually over the permit term, for contribution towards monitoring, modeling, and embayment studies. According to a figure presented by BACWA, however, a significant funding gap remains to fully implement the Nutrient Strategy (Figure 1). The full BACWA allocation may not be accurately represented on the below figure. Yet it is clear that implementation of the strategy, coupled with the phasing out of USGS funding, will require significant contributions from unidentified sources.

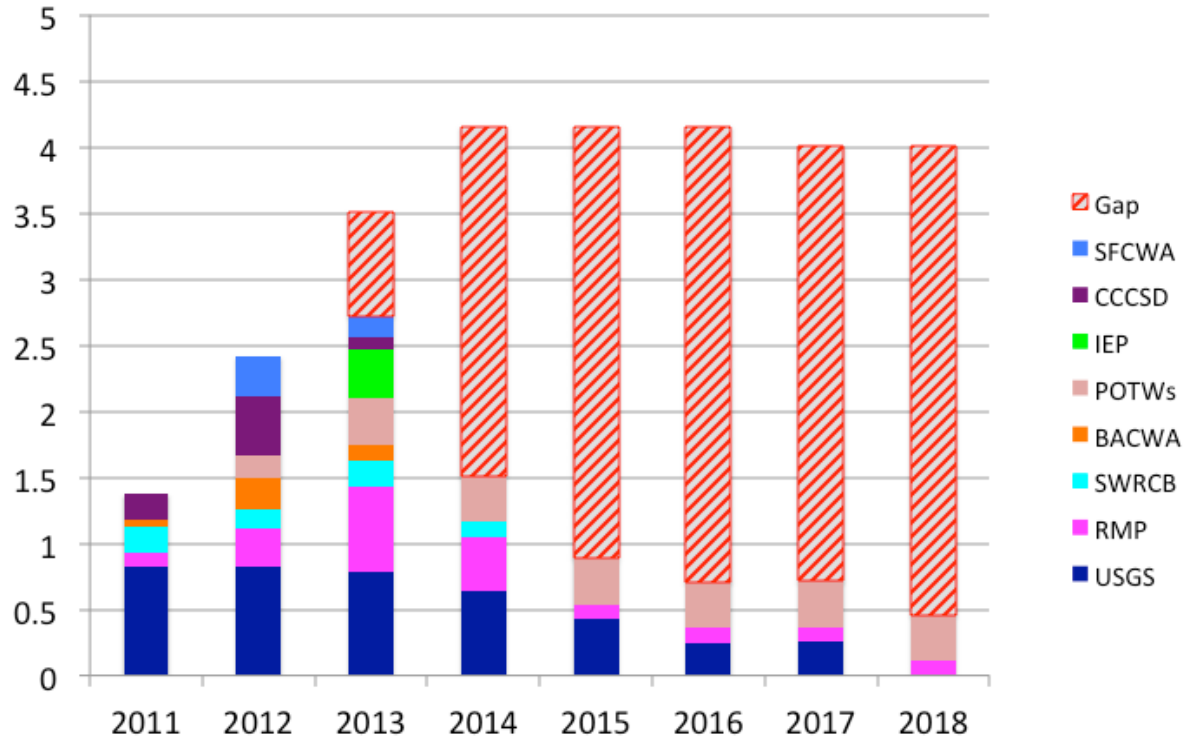

Figure 1. BACWA's funding projections for implementation of the Nutrient Strategy through 2018[1]

Faced with such a severe funding gap, which could exceed $3 million or ~80% of the required budget by 2018, the Board should question how this gap shall be filled. A reasonable expectation is that Water Board staff shall work closely with BACWA and SFEI to seek state and federal grants. Additional funding from POTWs and BACWA, however, should be required to complete the necessary analysis. The results from these studies will bear heavily upon decisions of which potentially costly approaches shall be taken to address the issue of nutrient enrichment. Short-term investments in the necessary studies will enhance decision making ability and potentially result in lower long-term costs.

OPPORTUNITIES FOR COLLABORATION WITH OTHER MONITORING PROGRAMS SHOULD BE EXPLORED

The issue of overlapping and potentially duplicative monitoring efforts in the Delta region has been discussed at length and is spawning the creation of a Delta Regional Monitoring Program, following a model similar to the Bay's Regional Monitoring Program (RMP). To address issues of cost and resource

[1] Taken from a presentation by David Williams, BACWA Executive Director, at Jan. 30, 2014 BACWA Annual Meeting. *Nutrients Overview: Where We've Been and Where We're Going.* Available at http://bacwa.org/

constraints for the Region 2 Nutrient Strategy, effort should be made to work with those monitoring programs operating in the northern reaches of Region 2. Staff may consider stating such a preference explicitly in the Permit or encouraging increased collaboration through changes the Nutrient Strategy. To the extent the funding gap identified in Figure 1 can be shrunk through contracts with agencies already operating in the Estuary, the Board should encourage enhanced collaboration between monitoring programs.

PERMIT PROCESS SHOULD ELIMINATE INSTITUTIONAL BARRIERS TO ENHANCED UTILIZATION OF TREATED WATER

Urban water providers currently retain the rights to provide water resources for all users within their service area, thus presenting an institutional barrier to enhanced reuse of recycled or suitably treated water. Water districts, for instance, can impose fees or other disincentives against sanitary districts for the opportunity to provide water to industry, landscaping, and agriculture. Given the serious drought conditions facing the State, we encourage the Board to view this Permit as an opportunity to reduce nutrient loads while exploring institutional barriers to water reuse.

For example, large industrial customers in Contra Costa County, including the region's major refineries, receive freshwater pumped from the Delta by Contra Costa Water District. The Sanitary District could serve these customers with suitably treated water, thereby significantly reducing water resource demands. This may not yield significant nutrient load reductions directly, though increased revenue could fund nutrient removal technologies or provide alternate incentives to reduce nutrient inputs. True, this could result in increased potable water rates for households, though reliability would be enhanced for municipal customers, and Delta water that would otherwise be used for industry may be sold to outside agencies to supplement lost revenue.

Sanitary districts located within the service areas of separate water districts may also be precluded from providing water to large irrigation customers, such as golf courses or Caltrans. Use of recycled or disinfected treated water in these applications should be encouraged wherever possible to directly reduce potable demand and nutrient loads. Processes for identifying such barriers to sensible water reuse should be identified in the permit itself, given the potentially complex developments required to implement such changes, which are generally outside the scope of the process identified in the permit under 'Evaluation of Potential Nutrient Discharge Reduction by Treatment Upgrades or Other Means'.

WATER BOARD EXPECTATIONS SHOULD BE ESTABLISHED FOR SCOPING AND EVALUATION PLANS

Scoping and evaluation plans are currently required in the Draft Permit as a means to identify strategies to achieve nutrient discharge reductions over time. Specific metrics or desired outcomes have not been identified though - with the exception that the plans must 'be acceptable to the Executive Officer'. Water Board staff can and should provide greater regulatory certainty to the regulated community and the ratepayers they represent, in terms of how the plans will be judged and what are the preferred outcomes.

This Water Board has experienced long delays on several regulatory matters related to wastewater and stormwater after allowing the regulated community to develop strategies on their own, only to be later rejected by the Executive Officer. This phenomenon seems likely repeat itself - at great expense, in terms of spent resources and valuable time required to address the issue. We encourage the Board to

establish benchmarks for plan evaluation, incentivize specific efforts for regional collaboration, and provide metrics for how nutrient management should fit into strategies for meeting recycled water goals. This effort could benefit from increased stakeholder engagement and scenario building exercises with the community.

***

Thank you for considering Baykeeper's comments. We understand this Draft Permit has been developed over several months through closed negotiations with the wastewater community - resulting in a phased approach led by the wastewater community, with little apparent opportunity for input from the public or interested stakeholders. We urge staff to enhance the level of transparency, given the tremendous consequences of this issue, while increasing regulatory assurance by providing greater guidance and metrics for Evaluation Plan review. We look forward to working with you on this issue for years to come and view it as a vital step in developing a more sustainable water system for the Bay Area.

Sincerely,

Ian Wren
Staff Scientist
San Francisco Baykeeper