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Re: CASA Comments on California Water Quality Monitoring Council Strategy - "Top Five Areas Where the Council Adds Value for the State of California"

Director Martorano and Members of the California Water Quality Monitoring Council:

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide thoughts on the California Water Quality Monitoring Council (Council's) future comprehensive strategy, as outlined in the Council document (May 30, 2018) entitled "The Top 5 Areas Where the Council has Expertise and can Add Value to the State ("Areas of Expertise"). For over 60 years, CASA has been the leading voice for public wastewater agencies on regulatory, legislative, and legal issues. CASA is an association of local agencies, engaged in advancing the recycling of wastewater into usable water, generation of renewable energy, and other valuable resources. Through these efforts, CASA's members help create a clean and sustainable environment for Californians.

CASA's acting representative to the Council, Shelly Walther, informed our regulatory workgroup that the Council's Areas of Expertise document was recently approved as the basis of building a framework for refocusing the Council's new Comprehensive Strategy. While we support some of the changes in the Council's direction, our members have identified several aspects of this document that are of significant concern. Our comments below are intended to ensure that the future direction of the Council continues to encourage and enhance stakeholder and public participation, and does not expand the authority and scope of Council activities beyond what is authorized under the 2007 Memorandum of Understanding (MOU) and related legislation.

Our overarching concern is that the Council is transforming its role from a coordinating, convening, and high-level data gathering and dissemination body, which has been successful in the past, into an entity focused on directing others on proper standards, methods, and thresholds. The latter role is one that the Council's workgroups and other programs and groups within the State Water Resources Control Board (State Water Board) and California resources agencies are expressly supposed to fill. This shift is at the core of our comments on some of the elements of this Areas of Expertise document.

Area #2: The Council establishes guidance on data quality and method consistency for established monitoring programs across the state.

Under this new framework, it appears that the Council's new Comprehensive Strategy could direct the Council to provide specific recommendations to its workgroups regarding data quality standards, method standardization, and comparability. CASA is concerned that in pursuing this approach, the

Council plans to fundamentally change its organizational structure to take on functions that were previously handled by the workgroups.

While SB 1070 specifies that the Council will develop in coordination with the State Water Board “a methodology for compiling, analyzing, and integrating readily available information” (see Water Code § 13181(e)(4)), the intended application of this charge is found in the MOU and the Council’s 2010 guidance manual. The MOU states the Council’s responsibilities include recommending actions “necessary to coordinate and expand water quality monitoring, assessment, and reporting efforts,” which is vastly different in scope than “establishing guidance on data quality and method consistency.” Further, Chapter 2 of the original Comprehensive Monitoring Program Strategy for California (December 23, 2010) notes in section 2.1 that the Council’s “theme-specific workgroups are responsible for the majority of the technical work involved in coordinating monitoring, developing assessment methods, and developing [web] portals” (at p. 17), while the “the Council plays a role made up equally of leadership, coordination, and support” (at p. 17.). Moreover, the chapter details this core philosophy of “a flexible organizational structure” in section 2.2.1 (at pp. 19-21) and clarifies the roles of the Council versus the workgroups in Table 1 (at p. 20). This approach focuses the Council itself on developing the “core assessment questions” while leaving details of “creating appropriate guidelines for monitoring and assessment methods and data management procedures” to the workgroups (p. 19).

The existing “bottom up” structure, where the workgroups are the primary drivers on data quality standards and method standardization, is much more appropriate than the new “top down” proposal articulated within the Areas of Expertise document. The original “bottom up” structure has the capability to provide for greater stakeholder participation. As membership on the Council is restricted, maintaining the existing structure allows for a much greater stakeholder involvement process that results in greater agreement, acceptance, and success of each project. Therefore, CASA recommends that the Council maintain its role in providing high-level direction and continue to allow the technical details to be developed at the workgroup level and through SWAMP, and we hope that this approach will be reflected in the Council’s new Comprehensive Strategy.

Area #3: The Council can identify where data interpretation thresholds are needed and help provide recommendations on what those thresholds could be.

Under this new framework, it could be interpreted that the Council’s new Comprehensive Strategy directs the Council to essentially establish numeric thresholds for pollutants that can then be used “to determine if beneficial uses of the waterbody are being supported.” If so, CASA is very concerned about this seemingly dramatic expansion of scope for the Council. This would be an entirely new function of the Council that was never envisioned in SB 1070, the MOU, or the original Comprehensive Monitoring Program Strategy, and it should not be within the purview of the Council.

Numeric thresholds for contaminants should be developed through an *inclusive public process*, not through recommendations of the Council. This limitation on the Council’s authority is apparent in the MOU between the California Environmental Protection Agency and the California Resources Agency for the Council, which explicitly states that “nothing in this MOU is intended to delegate, limit, or expand an agency or agency program’s responsibilities, statutory and other authorities, or discretion” (MOU section VII.A.). It is the role of the State Water Board to develop water quality objectives through a statutorily and regulatorily defined process that involved numerous stakeholders and opportunities for

public comment. To the extent that the Council is seeking to establish numeric thresholds, which could in turn be the basis for establishing water quality objective outside of that process, or to the extent that thresholds established by the Council are then used to interpret narrative objectives, we are concerned that this circumvents the appropriate regulatory processes.

As an example of a recent statewide stakeholder process that was effective and inclusive, the development of thresholds in recycled water for contaminants of emerging concern (CEC) is currently being assessed by an expert panel commissioned by the State Water Board through a public process. In this stakeholder process, the public, regulators, the regulated community, and technical experts have all been involved in development of the thresholds. Through this process, the panel has acknowledged that it may be premature to establish health-based data interpretation thresholds for many CECs. In contrast, numeric thresholds developed by the Council presumably would not be subject to a similarly expansive stakeholder and expert-driven process.

Because of the potential impacts associated with threshold setting, CASA supports use of an inclusive stakeholder process to evaluate and potentially develop numeric thresholds. The Council is not the appropriate venue for development of thresholds which could then be implemented in other policies and programs at the State Water Board and other state agencies.

Area #4: The Council can identify emerging methods and technologies and offer guidance on how those should be developed to answer current and future management questions.

Under this new framework, it appears the Council's new Comprehensive Strategy could direct the Council to identify new methods and make recommendations on standardizing the methods. The description of Area #4 explicitly refers to methods standardization, especially for new and emerging pollutants and methods. Similar to our concerns with Area #2, CASA wants to ensure this does not represent a fundamental change in the structure and role of the Council as it relates to the workgroups.

Specifically, an important component of research using emerging methods and technologies is to test the new techniques with different methods and under different conditions to help refine the test's accuracy and precision and evaluate its effectiveness. New monitoring techniques require robust testing conducted by multiple programs, under differing environmental conditions, to establish effective testing procedures. Standardization of procedures for, and conformity in, monitoring should be implemented only after there is a broad knowledge base of the test method's performance, variance, and limitations.

For example, it would be premature to mandate that all research agencies in California use one particular eDNA or CEC test method. However, it could be useful for the Council to facilitate and convene discussions among researchers in particular fields of study to help evaluate the benefits and shortcomings encountered when testing new monitoring technologies.

Chapter 2 of the original Comprehensive Monitoring Program Strategy explicitly describes the Council's focus on coordination rather than standardization, as stated in the following footnote on page 19:

The CWQMC uses the term 'standardization' to refer to the use of identical methods. In contrast, 'coordination' refers to the use of methods that, while technically different, produce comparable results that provide the basis for data integration, comparisons

across programs, and larger-scale and more complex assessments. Given the effort required to develop, promulgate, and maintain standardization, and the large number of partners involved in the web portals, the Council has opted for coordination. Standardization will be used as a final resort where coordination cannot produce the needed degree of comparability.

The “Areas of Expertise” document does not describe any analysis that would be performed to support a need for the “final resort” measure, i.e., method standardization. In fact, throughout the original Comprehensive Monitoring Program Strategy document, the need for flexibility is emphasized.

Prior to making a fundamental shift towards standardization, the Council would need to perform an analysis that the current approach is not working. Such an analysis should be performed at the individual workgroup level, not at the level of the Council itself. CASA recommends that, rather than making recommendations for method standardization, the Council first facilitate coordination of methods, which may include holding inclusive stakeholder meetings to evaluate the methods being used. This would be more in line with the original purpose of the Council, and we hope that this approach will be reflected in the Council’s new Comprehensive Strategy.

Conclusion

We thank the Council for its consideration of our comments regarding the future direction of the Council. We request the Council develop its new Comprehensive Strategy in such a way that takes into account the concerns noted above. We urge the Council to revise the strategy outlined in the “Areas of Expertise” to clarify the boundaries of the Council and ensure that the new document aligns with the recommendations of the original Comprehensive Monitoring Program Strategy. We look forward to discussing these issues with you in the future.

Sincerely,



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Director of Government Affairs

cc: Kristopher Jones, Assistant Director, California Water Quality Monitoring Council

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