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REPLY TO: 802 Balra Drive
El Cerrito, CA 94530

November 28, 2007

Brian Wines
San Francisco Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Permit(s) for Dredging or Storm Drain Water Flow
At Berkeley's Aquatic Park

Dear Mr. Wines:

This letter follows the Sierra Club's previous letter of November 19, 2007 regarding Berkeley Aquatic Park. The Sierra Club understands that the City of Berkeley is attempting to rescind the 1971 Board Order barring the discharge of storm water into Aquatic Park.

The Sierra Club opposes any rescission of that order. First, the order was issued based upon solid scientific information and analysis that storm water discharges into Aquatic Park would not be beneficial to aquatic life and habitat. The Sierra Club has seen no similar studies to date to support any change to those conclusions.

Second, the recent event where the City allowed dredging during the migratory bird season and the deposit of dredge spoils adjacent to Aquatic Park so they would discharge back into the Aquatic Park waters raises serious questions as

to whether the City has staff with the technical and scientific background to understand what it is doing and how its actions affect the habitat and wildlife of Aquatic Park and to properly monitor and control the work that it authorizes in its name. This is a very serious issue because no dredging should have been allowed at all during the migratory bird season, and dredge spoils should not have been dumped adjacent to the Park so that they could simply discharge back into the Park's waters. That made no sense at all.

Third, it does not appear that the Berkeley Public Works Department fully appreciates the fact Aquatic Park is a protected habitat area for bird species, including threatened and endangered species. It appears to view the park as simply a basin for water. Until the City staff demonstrates a clear understanding of the habitat and wildlife values at issue in the Aquatic Park, the Board should not rescind an order that has protected that habitat and those species for 36 years.

Fourth, given the oil spill that occurred bird species are now highly stressed in the Bay and protected waters where they seek refuge like Aquatic Park. It is not beneficial to those species to engage in actions that could stress that wildlife and their habitat even further until sufficient time has passed to allow those species to rebuild.

Finally, any Board action to rescind an order is an agency action that requires the appropriate CEQA review. The Sierra Club is not aware of any environmental assessment that has been done to date to evaluate the environmental impacts of rescinding the Board's 1971 order. If you believe that such documentation exists, then on behalf of the Sierra Club I request that you provide me with the identification of those documents and where they can be obtained. Until the proper environmental assessment is made, an action rescinding a Board order would be illegal.

Sincerely yours,

Signed

Norman La Force, Chair
East Bay Public Lands Committee