

## MONTEREY REGIONAL STORM WATER PERMIT PARTICIPANTS GROUP

April 18, 2012

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Sarah Hardgrave

**Vice-Chairperson**  
Tricia Wotan

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Monterey Peninsula  
Unified School District

Carmel Unified School  
District

Pacific Grove Unified  
School District

**Program Manager**

Monterey Regional Water  
Pollution Control Agency

5 Harris Court  
Bldg. D  
Monterey, CA  
93940

Attn:  
Heidi Niggemeyer  
(831) 645-4621

Ms Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1011 I Street, 24th Floor  
Sacramento, CA 95814



**Subject: Resolutions 2010-0057 and 2011-0013 regarding potential Requirements for State Water Quality Protection Areas that are not Areas of Special Biological Significance**

Dear Members of the State Water Resources Control Board:

This letter responds to the State Water Resources Control Board's (State Water Board) Notice of Public Hearing on the California Ocean Plan Amendment for Designation of State Water Quality Protection Areas (SWQPA) at Marine Protected Areas (MPA) dated March 8, 2012.

Monterey Regional appreciates the opportunity to participate in the public comment process on the proposed Ocean Plan amendment creating criteria for the designation of SWQPAs-GP. We understand that these proposed criteria are intended to protect natural water quality in a subset of SWQPAs designated as SWQPA-GP and are applicable to State Marine Parks and State Marine Conservation Areas. Monterey Regional has a major interest in protecting the beneficial uses of the Monterey Bay; however, we have concerns regarding the future implications of the proposed requirements in the Amendment.

The requirement that receiving waters at the point of discharge may not exceed Table 1 instantaneous maximum objectives of the Ocean Plan, imposed to protect the beneficial uses of Marine Managed Areas, may not be feasible for municipalities to meet without treatment controls. These effluent limits are set very low, some below drinking water standards, as they were never intended to be applied to stormwater. CA Water Code § Section 13241 states that "it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses and economic considerations should be taken into account". Monterey Regional has stated in many comment letters to the State Water Board that remedial measures for stormwater runoff should be triggered by identified water quality problems rather than the numerical exceedance of water quality objectives immediately adjacent to an outfall. Water quality problems should be scientifically identified prior to implementing potentially costly remedial measures that increase the financial burdens on coastal communities.

According to the proposed amendment, dry weather discharges are banned with no exceptions. The State indicates that the provisions for areas designated as SWQPA-GPs are meant to be less stringent than provisions for SWQPA-ASBSs. However, even though discharges are banned for SWQPA-ASBSs, the highest category of protection, exceptions are allowed. It has not been scientifically proven that dry weather discharges are a significant source of pollutants. Routing these dry weather flows to POTWs provides no environmental benefit and increases costs to municipalities and POTWs. The Staff Report and the Substitute Environmental Document (SED) does not address potential projects such as dry weather diversion that will be necessary to comply with the proposed criteria.

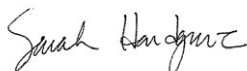
CEQA Article 17 §15252 requires that an SED address “alternatives to the activity and mitigation measures or potentially significant effects that the project may have on the environment” and, “any statement made by the State indicating the project has no significant or potentially significant effect on the environment, shall be supported by a checklist showing the possible effects the agency examined in reaching that conclusion”. The checklist in the State’s SED identifies no impacts when in fact potential projects necessary to comply with the proposed amendment may have significant environmental impacts. CEQA Article 4 § 21159 requires an assessment of impacts based on information regarding “reasonably foreseeable environmental impacts of compliance measures and feasible mitigation measures”. This assessment should include environmental impacts, including cumulative impacts, associated with construction activities associated with discharge controls such as diversion and runoff filtrations needed for compliance, as well as the dry weather ban. This assessment is missing from the State’s SED and CEQA Checklist; the CEQA analysis provided is flawed.

Monitoring costs are also excessive. Considerable additional funding would be required to implement the proposed SWQPA monitoring requirements. The financial burden of any monitoring program must bear a reasonable relationship to the need for and benefits of monitoring. (CA Water Code §§ 13267(b), 13225(c), of California’s Porter-Cologne Water Quality Control Act, Water Code § 13000 et seq.; *City of Burbank v SWRCB* (2005) 35 Cal.App.4<sup>th</sup> 613. Monterey Regional is concerned that the burden of conducting general research on the water quality along California’s coastline should not be placed on municipalities; rather it should be funded by the State. We believe the State is responsible for monitoring the receiving waters to determine if the discharges are having any appreciable impact on them.

The State Water Board has not demonstrated that the estimated costs bear a reasonable relationship to benefits of the monitoring program. Studies have not shown degradation of ASBSs or SWQPAs to warrant strict discharge requirements such as those in Table 1 of the Ocean Plan. The State’s Staff Report should identify the costs for the required monitoring and show a reasonable relationship to potential benefits of this monitoring. Source control, the availability of source control options, and other pollution prevention methods should be considered as methods for addressing pollutants which may present a risk to Marine Managed Areas. The SED should identify methods to address pollutants at the source as an alternative or adjunct to end-of-pipe treatment or diversion. It is clear that there are huge expenses associated with the additional requirements for SWQPAs that are not ASBSs. Most of these expenses will have to be borne by the local communities, many of which are small and struggling with extreme economic challenges. Imposing the proposed additional requirements could lead to cutbacks in vital public services that are currently provided to the residents of these communities.

We are all concerned by the continued increase in stormwater regulation. We anticipate that the recent very favorable southern California ASBS results, published in a technical publication co-authored by a SWRCB staff member, indicating that ASBSs are generally in good health, combined with the very high costs required to implement the current proposed criteria for SWQPAs-GP designation, will cause staff to reconsider the adoption of this amendment. We believe staff proposals should be feasible and targeted to focus on what is scientifically necessary to protect the SWQPAs, MPAs, and their marine resources. We proposed the State and local municipalities would work together to preserve and protect the MPAs in a realistic and reasonable way. We urge you to take these concerns into consideration prior to adopting the proposed amendment.

Sincerely,



Sarah Hardgrave, Chair  
Monterey Regional Storm Water Management Program