

5/26/07 Scoping Mtg.
CA Ocean Plan Amend.
Deadline: 7/27/07 Noon

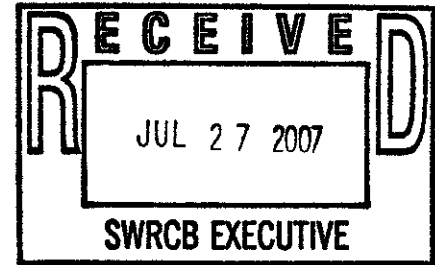
July 16, 2007

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California State Water Resources Control Board
Executive Office
Attn: Song Her, Clerk to the Board
P.O. Box 100
Sacramento, CA 95812-0100



Subject: California Ocean Plan Triennial Review and Five-Year Strategic Plan

Dear Ms. Her:

The City of Monterey appreciates the opportunity to provide input on the impending triennial review and five year strategic plan. The State Water Resources Control Board ("State Board") is requesting public comments on proposed amendments to the California Ocean Plan contained in a June 2007 scoping document entitled "Amendment of The Water Quality Control Plan: Ocean Waters of California" ("Scoping Document"). Pursuant to the public comment process for this matter, we submit this letter requesting that the Ocean Plan be amended to include a reasonable, comprehensive, and cooperative approach for the regulation of discharges of storm water and other runoff into Areas of Special Biological Significance ("ASBS"), an issue of substantial statewide importance.¹

We also look back to our comments dated March 31, 2005 (copy attached) and see that a number of these concerns are just as relevant today as they were then. Specifically, to our knowledge, there has never been an analysis of the current enforcement based approach costs as they relate to the benefits. This analysis is required under the Porter Cologne Act. Also, the Board directed staff at their hearing of April 21, 2005 to hold a series of public workshops to listen to the concerns of the interested parties and to provide guidance to the Board on potential amendments to the Ocean Plan. What happened though is that two workshops were held at which State staff introduced the idea of "Special Conditions" and a "General Exception" process. As far as we're aware, this proposed process is still undergoing environmental review and is not yet in place. Despite this fact, communities and property owners that have discharges to an ASBS are still being required to apply for an exception or cease discharges without knowing what the overall or long-range goal of the program is going to be.

The creation of a clear framework for regulating storm water discharge to ASBS was a significant issue for commenters in 2004, during the preparation of the 2005-2008 "California Ocean Plan

¹ Additionally, the California Water Boards have begun an effort to update the Five Year Strategic Plan. As detailed above, developing a process for addressing storm water discharge to ASBS is a critical issue of statewide significance, and therefore falls within the purview of the Strategic Plan. Further, the current Strategic Plan already seeks to address storm water and nonpoint source pollution, and ensure that "stakeholders . . . understand their role in contributing to water quality." 2001 Strategic Plan at 7, 8, 18, 24. To facilitate the accomplishment of those stated goals, we respectfully request that the Strategic Plan be revised to include the development of a programmatic approach to storm water discharge to ASBS as a key strategic project.

Triennial Review and Workplan" ("Workplan"); however, their concerns have not been addressed in the current proposed amendments. For example, according to the Workplan, commenters (i) "oppose[d] the interpretation of the Ocean Plan's prohibition on discharges to ASBS/SWQPAs as now applicable to storm water runoff," (ii) contended that "the Ocean Plan should not be applied to storm water discharges . . . because it would be a further step in the piecemeal development of policy that is in need of clarity"; and (iii) "stated that a statewide storm water policy should supersede the Ocean Plan in terms of setting standards for storm water discharge." State Water Resources Control Board, California Ocean Plan Triennial Review and Workplan 2005-2008 at 33. However, despite the clear focus of these comments, a comprehensive, permit-based program has not been developed.

The ongoing amendment process provides an appropriate vehicle for the State Board to address the urgent need for a practical program governing storm water discharge to ASBS *now*. Otherwise, consideration of this important statewide issue will be handled through an enforcement mechanism using exceptions, which do not provide the stability and predictability needed for a program of this nature.

The State Water Resources Control Board Has Already Recognized that the Stewardship of Areas of Special Biological Significance Is an Important Mission

In the mid-1970s, thirty-four ASBS along the California coast were designated as unique biological communities requiring protection by the State Board. These ASBS occupy approximately one-third of the California coastline and nearby islands, including developed areas, such as La Jolla, Malibu and Laguna Beach, and relatively undeveloped areas, such as Redwoods National Park and Kings Range National Conservation Area.

The stewardship of ASBS is an important mission for the State Board, the various regional water boards, and the neighbors of these valuable coastal waters. Accordingly, in 2003, the State Board funded a statewide survey to assess storm water and non-point source discharges to ASBS, and subsequently held various workshops to collect input from stakeholders concerning appropriate mechanisms for regulating storm water discharges to ASBS. Moreover, the State Board has already cited storm water and non-point source runoff as priority issues in the Workplan, and under Issue #17 of the Scoping Document. For the reasons described below, it is necessary to amend the Ocean Plan to explicitly address storm water discharge to ASBS in a comprehensive, programmatic fashion.

A Reasonable, Comprehensive and Cooperative Program Is Necessary to Effectively Regulate Storm Water Discharge to ASBS

Definition of "Waste" – ASBS are currently regulated under water quality provisions contained in the Porter-Cologne Water Quality Control Act ("Porter-Cologne"), the California Public Resources Code ("PRC"), and the California Ocean Plan ("Ocean Plan"). These standards require that ASBS be protected from harmful concentrations of pollutants that cause undesirable alterations to natural water quality, and consequently prohibit discharges of waste absent the imposition of Special Conditions.

Although the ASBS program began as a cooperative process between governing agencies and stakeholders in coastal California, it has been converted into an enforcement threat against many of those supportive entities. While the ASBS clearly must be protected and preserved, staff appear to be interpreting the Ocean Plan to prohibit the discharge of all storm water to ASBS from areas with any level of human activity. This approach proposes to regulate storm water as *per se* waste, placing it in the same category as sewage, and is inconsistent with the State Board's precedent in the San Diego MS4 matter, where the State Board rejected a Regional Board finding that urban runoff is a *per se* waste.

The State Board's "detection-based" approach is not required under Porter-Cologne and the PRC, which focus on controlling ASBS discharges that could demonstrably harm the receiving ASBS, and authorize the imposition of reasonable "special conditions". Accordingly, the Ocean Plan should differentiate which storm water discharges to ASBS constitute waste, and which do not, based on whether the storm water contains harmful quantities of pollutants or would result in an undesirable alteration of natural water quality.

Process – The State Board previously considered regulating storm water discharges to ASBS via an amendment to the Ocean Plan, but subsequently resorted to the exceptions. We think that reconsidering the amendment approach is warranted, and timely in light of the ongoing proceedings to amend the Ocean Plan as part of the triennial review.


Regulating storm water discharge to ASBS via an Ocean Plan amendment would provide a predictable framework for dischargers to follow, thereby eliminating preemptive enforcement actions that presume dischargers to be in violation regardless of their impact on the receiving ASBS or ability to control the discharge. Storm water dischargers are entitled to know what is expected of them in advance, and should have the opportunity to achieve compliance – reasonable expectations that an Ocean Plan amendment would provide.

Ocean Plan History – The prior history of the Ocean Plan and its ASBS provisions support the amendment of the Ocean Plan to establish a comprehensive program for the regulation of storm water discharges to ASBS. Historically, there has not been an ASBS program for storm water, as the State Board did not recognize the need to regulate storm water discharges to ASBS until after the ASBS inventory was completed in 2003. As a result, storm water has not been subjected to the kind of administrative review that should precede the application of the Ocean Plan to storm water. For example, it does not appear that an attainability analysis has been performed to support the regulation of storm water discharge to ASBS. Consequently, amending the Ocean Plan to include a regulatory framework for storm water discharges to ASBS presents an opportunity to conduct such a review in context.

Recommendations

Considering the significance accorded to the issue by the State Board, the substantial interest among stakeholders, the strong need for a cooperative programmatic approach, and the apparent lack of any prior attainability analysis, a complete review of the regulation of storm water discharge to ASBS is long overdue and should be comprehensively addressed at this time. The State Board has already deemed the discharge of storm water to ASBS to be a priority, and Ocean Plan amendments are currently being considered as part of the triennial review process. We therefore respectfully request the inclusion of this issue on the triennial review priority list and in the current Scoping Document.

Sincerely,


Fred Meurer
City Manager

Attachment: City of Monterey March 31, 2005 Letter to State Board

c: City Attorney
Director of PEE&C
City Engineer
Pacific Grove City Manager, Jim Colangelo
Chief Counsel, Pebble Beach Company, Mark Stilwell



March 31, 2005

Ms. Celeste Cantú
Executive Office
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

VIA FAX

Re: Comments of the City of Monterey on the 2005 Proposed Ocean Plan Amendments

Dear Ms. Cantú:

The City of Monterey ("Monterey") appreciates the opportunity to comment on the proposed revisions to the California Ocean Plan, to be heard at an April 6, 2005 hearing of the State Water Resources Control Board ("Board"). As described in greater detail below, Monterey is particularly concerned with the approach proposed in the Final Functional Equivalent Document ("FFED") to discharges of stormwater into Areas of Special Biological Significance (ASBS). In particular, the proposal has eliminated the previous recommendation of State Board staff in its December 2003 "Informational Document" regarding those revisions that storm water be controlled through the maximum extent practicable ("MEP") standard generally applicable to storm water discharges, and instead is proposing an absolute prohibition on such discharges.

A fundamental problem with the approach in the FFED is that it attempts to treat the proposed discharge prohibition as already in effect, and therefore avoids necessary consideration of the costs of the proposed prohibition in relation to the effects on beneficial uses as required under the Porter Cologne Act. In doing so, the proposal also ignores the significant environmental impacts that would result from the proposal, since "on the ground" it would necessitate massive re-plumbing of municipal separate storm sewer systems in many areas of the state.

Monterey is particularly concerned with the proposed imposition of a discharge prohibition given the Central Coast Regional Water Quality Control Board's ("Regional Board") proposal to issue Cease and Desist Orders ("CDOs") to a number of central coast municipalities regarding discharges to an ASBS, despite the fact that those municipalities have pending a comprehensive Monterey Regional Storm Water Management Plan ("MRSWMP") that is set for consideration at the Regional Board's May 12 meeting. Addressing these issues through the MRSWMP is certainly the more rational and efficient approach, as compared to a blanket prohibition coupled with a redundant and cumbersome exception process.

HISTORY OF MONTEREY'S PARTICIPATION IN STORM WATER MANAGEMENT.

To provide some background, Monterey has a history of taking a pro-active approach to storm water control generally and protecting our oceans, including the Pacific Grove ASBS ("PGASBS").¹ Monterey took a leadership role in the storm water arena by serving as the project manager working with local, state, and federal agencies to develop the *Model Urban Runoff Program: A How to Guide for Developing Urban Runoff Programs for Small Municipalities*. This manual became a nationally recognized document which gives practical advice for developing a reasonable program with the intent of improving water quality and meeting the requirements of the law through implementation of the MEP standard.

On March 10, 2003, the City submitted a complete NOI, a complete MRSWMP, paid permit fees and has since participated, in good faith, in the general permitting process, pursuant to Waste Discharge Requirements ("WDRs") for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("MS4s"). Monterey staff have worked collaboratively with local, state and federal entities and non-governmental organizations (such as the NRDC) to strengthen the language in its program to ensure that appropriate measures are taken to prevent storm water pollution. After lengthy discussions among regional group members and the regional board staff, Best Management Practices ("BMP's") have been carefully chosen to address specific pollutant categories found during dry and wet weather monitoring events over the past five years in the cities of Monterey and Pacific Grove. Regional Board staff have indicated that the program submitted by Monterey in 2003 not only meets the MEP standard but goes beyond the requirements of the permit in many cases.

Though not yet required to do so, Monterey along with the other entities that have banded together to form the MRSWMP have already begun to implement public education and outreach efforts. In addition, Monterey, has actively participated in and funded "Urban Watch" and "First Flush" stormwater monitoring programs for many years.

However, despite the efforts that had been made in the pending MRSWMP approval process, at the very end of 2004, Monterey, along with several other jurisdictions along the Central Coast, received notices that the Regional Board staff was proposing to issue Cease and Desist Orders ("CDOs") relating to the discharge of storm water (presumed to be waste) into several Areas of Special Biological Significance, including the PGASBS. The hearings on the CDOs have been tentatively continued to a date in July, at the next Regional Board meeting after the hearings on the MRSWMP.

¹ The "Pacific Grove Marine Gardens Fish Refuge and Hopkins Marine Life Refuge" stretches from the Monterey/Pacific Grove city limit line on the east to Point Pinos on the west, and seaward approximately 1/3 to 1/2 mile. Monterey has no land which abuts the PGASBS. However, approximately eighty acres of the upper portion of New Monterey and ten acres of the Lighthouse Business district flow into the Pacific Grove storm drain system. Indirectly, these waters then flow into the PGASBS through two separate outfalls, one adjacent to Greenwood Park, the other near Hopkins Marine Lab.

NEED FOR COMPREHENSIVE STATE WIDE REGULATORY FRAMEWORK FOR STORM WATER MANAGEMENT

The proposed Ocean Plan revision continues the generally piecemeal approach to municipal storm water discharges. Instead of addressing this focused concern on only a subset of storm water discharges into certain ocean waters, a more comprehensive and cohesive approach to municipal storm water needs to be adopted. In this regard, Monterey agrees with the May 17, 2004, Comments regarding Triennial Review of the California Ocean Plan submitted by the California Storm Water Quality Association ("CASQA"). This proponent of practical storm water management objected to the current Ocean Plan Amendments on the basis that there is currently no comprehensive statewide policy for storm water program implementation and this application of the Ocean Plan further piecemeals the regulatory framework by which storm water programs are implemented.

THE CURRENT PROPOSAL DOES NOT COMPLY WITH THE PORTER COLOGNE ACT OR WITH SB 512.

Contrary to the attempted characterization in the FFED, the present proposal is the first time that stormwater is expressly being included within the scope of the Ocean Plan's ASBS prohibition. On the basis of this fundamental mischaracterization, the FFED incorrectly claims that: "The proposed California Ocean Plan amendments do not alter the State's existing regulatory framework for controlling storm water and non-point sources of discharge." FFED at 6. As a result, the proposed revisions have failed to comply with applicable requirements of the Porter Cologne Act, or with SB 512, and the FFED further fails to evaluate the environmental impacts of the proposed revisions.

The FFED recites the history of the ASBS provisions in the Ocean Plan, recognizing that when the ASBS provisions were adopted in 1978, and then amended in 1983, stormwater discharges were not considered point sources subject to the prohibition. FFED at 43. In a key step, the FFED then retrospectively argues that the 1978 and 1983 amendments should be deemed to have covered stormwater in light of the 1987 amendments to the Clean Water Act which set out a schedule for establishment of a regulatory program for stormwater in the context of the National Pollutant Discharge Elimination System ("NPDES") program. The fundamental problem is that at none of these steps was the Porter Cologne Act's required consideration of costs in relation to protection of beneficial uses undertaken. Moreover, SB 512, which became effective on January 1 of this year, reaffirms application of the Porter Cologne Act to the establishment of a prohibition or special conditions relating to ASBSs.

The FFED then points to the applicable provisions of the 2001 Ocean Plan, claiming that it "retains the same prohibition on discharges as in the 1983 . . . version." FFED at 43. Yet, not having been adopted as a prohibition clearly applicable to stormwater discharges in the first instance, it could not therefore be "retained." Moreover, the 2001 Ocean Plan does not clearly make the prohibition applicable to stormwater either. Instead, it simply defines "Areas of Special Biological Significance" as being "those areas designated by the SWRCB as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable." Ocean Plan Appendix I (definitions). The 2001 Ocean Plan then

cryptically states in Item III.E.1 that: "Waste shall not be discharged to areas designated as being of special biological significance." Storm water is not mentioned, and in fact nowhere does the Ocean Plan explicitly establish a storm water discharge prohibition into ASBSs.

The Regional Board in its proposed CDOs, and the FFED, point to two sources of authority that are argued to support the interpretation that the Ocean Plan was intended to reflect such a prohibition. First, it cites to Order No. 2001-08, relating to discharges by CalTrans to the Irvine Coast ASBS. *In Re California Department of Transportation*, State Water Resources Control Board Order 2001-08. But as plainly described in that decision, the discharge in that case consisted of **both** storm water and non-storm water. Order No. 2001-08 at 2. It therefore does not establish effective precedent for a discharge composed exclusively of storm water.

In any event, even assuming that the 1978 and 1983 Ocean Plans relied upon in Order No. 2001-08 effectively expanded the discharge prohibition to include non-point sources of pollution, they were overridden by Assembly Bill 2800, passed in 2000, which stated that:

In state water quality protection areas, point source waste and thermal discharges shall be prohibited or limited by special conditions. **Non-point source pollution shall be controlled to the extent practicable.**

Public Resources Code Section 36710(f) (Emphasis Added). This language could not be plainer that only point sources would potentially be the subject of a discharge prohibition. For non-point sources, only controls to the maximum extent practicable were required. To the extent the Ocean Plan at the time provided otherwise, it was repealed by the Legislature, which clearly had the authority to do so. Any interpretation of the 2001 Ocean Plan to include such a prohibition conflicts with the State law in effect when it was adopted (Section 36710(f)) and is correspondingly flawed. Likewise, Order No. 2001-08 did not purport to modify the Ocean Plan, and cannot reasonably be interpreted to have done so, as formal rulemaking did not occur.

Senate Bill 512, which became effective January 1 of this year, provides that:

[i]n a state water quality protection area [defined to include ASBSs], waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the [Porter Cologne Act] and implementing regulations . . .

Public Resources Code Section 36710(f) (as amended effective January 1, 2005). First of all, by recognizing that a prohibition is just one alternative (the other being the imposition of "special conditions"), SB 512 implicitly recognizes that a prohibition was not yet in effect, but would need to be the subject of future action by the State Board.

Moreover, pursuant to SB 512, any outright prohibition on storm water into an ASBS is made subject to all pertinent provisions of the Porter Cologne Act. These include Water Code Section 13263's requirement that the limitations "take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." Section 13241 in turn requires consideration, *inter alia*, of the following factors:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved
- (d) Economic considerations.

Accordingly, any prohibition on storm water discharges to ASBSs without regard to consideration of beneficial uses and costs as required by the Porter Cologne Act, will be in violation of the terms of the Act. Of course, the FFED disclaims any need to do so, at page 56. This failure to comply with the express requirements of SB 512 makes the proposed prohibition of stormwater discharges to ASBSs legally flawed.

The State Board must be honest, rather than circuitous, in acknowledging that the proposed amendment will expand the application of Ocean Plan provisions that were adopted in an era when stormwater was **not** covered by those provisions, through the administrative interpretation that they now do so. The flaw in this approach is that it results in a shell game, through which the consideration of beneficial uses and costs required under the Porter Cologne Act would impermissibly be avoided. The beneficial uses and costs were not considered when the provisions were established in the first place since stormwater was not included at that time. No evaluation of costs and benefits occurred in connection with the reinterpretations. And no evaluation of costs and benefits accompanies the currently proposed Ocean Plan revisions. This attempted shell game clearly violates the Porter Cologne Act, as well as the State Board's own rulemaking requirements. The current attempt at a stealth regulation is even more blatant given the recent passage of SB 512 that reaffirms the applicability of the Porter Cologne Act's requirements to such an action.

THE ALTERNATIVE PREVIOUSLY PROPOSED BY STATE BOARD STAFF IN 2003, ADDRESSING STORMWATER DISCHARGES TO ASBSs, SHOULD BE ADOPTED INSTEAD OF A DISCHARGE BAN.

In December 2003, while scoping amendments to the Ocean Plan, State Board staff prepared an "Informational Document." It contains the staff recommendation that the Ocean Plan be amended to address storm water discharges to ASBSs through the ongoing NPDES Phase II process. It provides:

Staff Recommendation: Amend the 2001 California Ocean Plan to establish the special conditions, pursuant to Section 36710(f) of the PRC, under which discharges authorized by an NPDES storm water permit will be allowed. The amendment would include minimum requirements for discharges authorized under NPDES storm water permits that discharge to SWQPAs that would be addressed through a discharger's Storm Water Management Plan/Program or Storm Water Pollution Prevention Plan.

Included in this definition of "special conditions" are a prohibition on new discharge points, a prohibition on non-storm water discharges through storm water conveyance

systems (that are not otherwise authorized), the use of an accelerated iterative process specifically implemented on management practices that address discharges into SWQPAs, and specific monitoring requirements. No discharges from new outlets will be allowed. Permitted storm water discharges, regardless of the effective date of inclusion under or issuance of the permit, will be allowed as long as their outlets were constructed prior to the effective date of these amendments.

Informational Document at 32. <http://www.swrcb.ca.gov/plnspols/oplans/docs/scopedoc.pdf>

This is precisely the approach that Monterey believes is contemplated under SB 251. It is also the only approach that can survive the required analysis under Water Code Sections 13263 and 13241. Notably, existing discharges would be grandfathered under the 2003 staff proposal, which implicitly recognizes that re-plumbing municipal storm water systems would result in excessive costs without offering any additional protection of beneficial uses. The 2003 Informational Document goes on to describe exactly how this process should be implemented:

Storm water (wet weather) runoff would not be permitted to cause or contribute to an exceedance of the California Ocean Plan's water quality objectives. To accomplish this we propose an iterative process with an accelerated schedule (as compared to non-SWQPA permit areas). All dischargers would be required to submit their revised SWMP or SWPPP to the RWQCB within six months of the effective date of the approved amendments. The SWMP or SWPPP must address discharges into SWQPAs, and how pollutants will be reduced in runoff entering these SWQPAs through the implementation of BMPs. The BMPs will be described in the SWMP or SWPPP with a schedule for implementation. The SWMP or SWPPP would be subject to the approval of the RWQCB. The schedule must be developed to ensure BMPs are implemented as soon as practicably possible.

If the results of water quality monitoring indicate discharges are causing or contributing to exceedance(s) of applicable water quality objectives, the discharger would be required to submit a report to the RWQCB within 30 days. That report must describe BMPs that are currently being implemented, BMPs that are planned for in the SWMP or SWPPP, and additional BMPs that may be added to the SWMP or SWPPP. The report shall include an implementation schedule. The RWQCB may require modifications to the report. Within 30 days following approval of the report by the RWQCB, a discharger would then revise its SWMP or SWPPP to incorporate any new or modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required. So long as the dischargers have complied with the procedures described above and are implementing the revised SWMP or SWPPP, the dischargers do not have to repeat the same procedure for continuing or recurring exceedances of the same water quality objective unless directed by the RWQCB to develop additional BMPs.

Informational Document at 33. This previously proposed approach is much more sensible than the outright ban proposed in the current Ocean Plan revisions. It is also more sensible than the cumbersome and unnecessary application of the exception process.

THE STATE ALSO MUST ADDRESS STANDARDS FOR MONITORING AND REPORTING PROGRAMS

The rulemaking process also needs to provide statewide standards for monitoring and reporting. The proposed CDO for Monterey cites Water Code Sections 13267 and 13383 for authorization to impose a very expensive and complicated monitoring program on the municipalities. Yet neither of these provisions authorize the Regional Board to impose such monitoring program. Section 13267(a) provides for investigations only in connection with the establishment of actual waste discharge requirements, subject to the requirements of the Porter Cologne Act to consider beneficial uses and costs in the establishment of those requirements, as set forth above. Water Code Section 13267(b)(1) requires that "[t]he burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." The State Board must address these issues when monitoring and reporting requirements are established.

Regarding the PGASBS, the Regional Board has stated that the purposes of the monitoring and reporting program are: "first, to determine natural water quality and benthic marine life conditions, and second, to measure the effectiveness of BMPS." Proposed CDO at 5. However, experts have opined that the proposed monitoring program will be ineffective and cannot possibly achieve this result. Rather, the State Board should engage in rulemaking, hire its own experts and arrive at comprehensive, workable standards, based on good science, that can be employed throughout the state. And, in accordance with the Porter Cologne Act, such requirements should only be imposed if they are economically feasible.

THE STATE MUST PROVIDE FUNDING FOR STORM WATER MANAGEMENT PROGRAMS

CASQA, in its May 17, 2004 comments made the point that current version of the Ocean Plan to establish prohibitions for point source discharges to the ASBS "*did not specifically consider the unique economic, technical and social impact of these prohibitions as they apply to urban stormwater runoff.*" The City of Monterey heartily agrees with CASQA. It is also clear that the economic impacts to the cities of the current piecemeal approach, have not been reviewed by the State Board. The far-reaching impacts to the owner of any property that has the potential of discharging storm water, by storm water systems or by surface flow, into an ASBS, has not been identified. The social value of that demanded has not been balanced against the social costs. It would be technically infeasible to keep all storm water from flowing into the ASBSs – but that is what these CDOs are demanding. An analysis of the economic, technical and social impacts of prohibitions of urban storm water runoff is required both by the Porter Cologne Act, as set forth above, and as a matter of public policy. Such analysis must accompany rulemaking to revise the Ocean Plan to include a comprehensive scheme for storm water management.

Further, required implementation of a new program or higher level of service is unconstitutional without a subvention of funding. The current interpretation of the Ocean Plan to ban storm water discharges in the ASBS violates the California Constitution, Art. XIII B § 6, which requires the legislature to provide a subvention of funds to reimburse local governments, whenever the Legislature or any state agency mandates a new program or a higher level of service. In this instance, the municipalities are ordered to study and redesign or redirect their storm drain systems. There is no accompanying funding mechanism. This is a clear mandate of a new program or higher level of service. Therefore a subvention of funds is required under the procedures of Cal Gov't Code §§17500-17630. The State Board can implement procedures for subvention of funds through the rulemaking process.

THE PROPOSAL WILL RESULT IN SIGNIFICANT IMPACTS THAT NEED TO BE ADDRESSED UNDER CEQA.

Finally, there are clearly environmental implications resulting from any action that would result in the redesign and redirection of storm drain systems. In Monterey's situation, a new storm sewer line would need to be constructed at a cost of over \$3 million, in order to discharge the stormwater into another location where the ultimate impacts on beneficial uses would be essentially indistinguishable from the current situation. In addition, there will be some negative environmental impacts to the areas of the ocean where the redirected fresh waters will be diverted. These effects are multiplied by the numerous stormwater systems throughout the state that would require similar modifications, some of which would be even more environmentally impacting than those that would be necessary in Monterey. As a result the FFED cannot be justified under CEQA because the proposal would have significant environmental impacts.

CONCLUSION

In conclusion, the State Board should establish "special conditions" consistent with the 2003 staff proposal that take advantage of, and build upon, the efforts being made under the stormwater permit program, rather than imposing an unsupported blanket prohibition, and adding an unnecessary and inappropriate administrative process in the form of individual exemption processes.

Respectfully Submitted,



Mayor
City of Monterey

cc: State Water Resources Control Board Members
Gerald Secundy, Peter Silva, Tam Doduc, Richard Katz
and Arthur Bagget, Jr.
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Sacramento, CA 95814