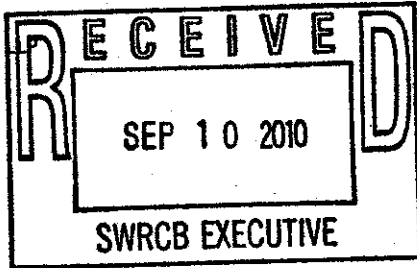


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September 10, 2010

VIA EMAIL: commentletters@waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comment Letter – California Ocean Plan – Triennial Review

Dear Ms. Townsend and Members of the Board:

We write to you in response to your July 27 notice regarding triennial review of the California Ocean Plan, specifically with regard to the regulation of stormwater flows to the ocean. Pursuant to the public comment process for this matter, we submit this letter to request that the Ocean Plan be amended to include a reasonable, comprehensive, and cooperative approach for the regulation of discharges of stormwater and other runoff into Areas of Special Biological Significance ("ASBS"), an issue of substantial statewide importance.

As you know, the Ocean Plan contains numeric water quality standards that largely were developed decades ago. See Tables A and B. These water quality standards were developed at a time when the California Water Boards did not consider stormwater flowing to the ocean to be a discharge of waste. Subsequently, in 2001, the State Water Board held that a discharge of stormwater from the Pacific Coast Highway at Crystal Cove in Orange County was a discharge of waste to the nearshore environment, at that location an ASBS.¹ The State Water Board never has conformed the water quality standards of the Ocean Plan with this change in policy, resulting in a disconnect between those standards and stormwater policy, and placing the regulated community at great prejudice and risk, particularly in the vicinity of the State's ASBS. This letter is to request that the State Water Board address this problem, and ensure that the improper application and enforcement of the Ocean Plan's water quality standards to stormwater does not occur.

The basic problem arises because the Table A and Table B water quality standards were promulgated for one purpose, and now may inappropriately be applied for a different purpose that has never been approved through appropriate legal process. The Table A and B standards were promulgated for application to industrial and municipal wastewater, such as may be

¹ *In Re: California Department of Transportation* (State Board Order WQ 2001-08).

9/22/10 Public Hearing
CA Ocean Plan - Tri Review
Deadline: 9/10/10 by 12 noon
650 Town Center Drive, 20...
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
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discharged from a publicly owned treatment works. These standards never were intended to be applied to stormwater flowing to the ocean. The potential application of these standards to stormwater never has been subject to analysis under the Porter-Cologne Water Quality Control Act, including, without limitation, under California Water Code Section 13241 which requires the Ocean Plan's standards to be reasonably achievable, and take into account economics and other important societal factors. In addition, the application of these standards to stormwater never has been processed pursuant to the California Environmental Quality Act, which would require analysis of unintended adverse environmental impacts associated with such policy, such as increased greenhouse gas emissions, among many other potential impacts.

These problems are apparent in developing policy for ASBS.² With regard to ASBS, State Water Board staff are developing a program that excepts certain stormwater flows entering ASBS from the prohibition against waste discharge contained in the Ocean Plan. That prohibition suffers from the same problem that affects the Table A and B standards in that the prohibition never has been subject to appropriate legal process that would allow it to be applied to stormwater. That problem also should be addressed during triennial review.

In sum, this developing ASBS policy mistakenly presumes that: (a) the ASBS wastewater discharge prohibition applies to stormwater flowing to ASBS, and (b) the Table A and B standards lawfully may be applied to such stormwater. These mistaken assumptions must be corrected in order for the State to achieve sound and lawful policy for ocean stormwater and ASBS protection.

Triennial review provides an appropriate vehicle for the State Water Board to address the significant need for a practical program governing stormwater discharges to ASBS. 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.

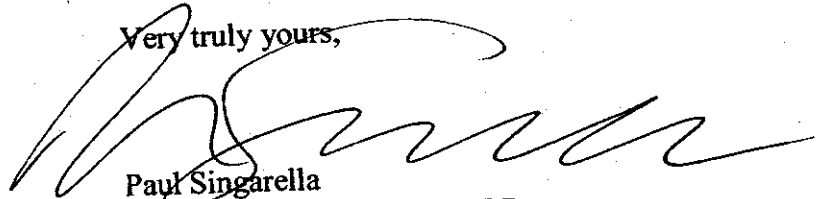
We urge the State Water Board to address these fundamental problems during triennial review. We appreciate the opportunity to comment on triennial review priorities, and look

² Notice of Preparation of a Statewide Program Environmental Impact Report for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges Into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses. State Water Resources Control Board, February 4, 2010.

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forward to working with the State Water Board and its staff on these important issues. Should you have any questions or comments whatsoever, please do not hesitate to contact us.

Very truly yours,



Paul Singarella
LATHAM & WATKINS LLP

cc: Mark Stilwell, Pebble Beach Company
Thomas Quattlebaum, Pebble Beach Company
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