

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY



DEPARTMENT OF PUBLIC WORKS

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February 21, 2012

VIA ELECTRONIC MAIL (commentletters@waterboards.ca.gov) AND U.S. MAIL

JEANINE TOWNSEND, CLERK TO THE BOARD
STATE WATER RESOURCES CONTROL BOARD
1001 I STREET, 24TH FLOOR
SACRAMENTO, CA 95814



SUBJECT: SPECIAL PROTECTIONS FOR AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, GOVERNING POINT SOURCE DISCHARGES OF STORMWATER AND NONPOINT SOURCE WASTE DISCHARGES

Dear Members of the State Water Resources Control Board:

Thank you for the opportunity to comment on the February 3, 2012 version of Attachment B - Special Protections for Areas of Special Biological Significance. The County of Monterey reiterates its support of efforts to effectively protect the waters of the State, especially in the Areas of Special Biological Significance (ASBS), but the County is still concerned that the cost of this program will far outweigh the benefit realized by its implementation. The County expresses its desire to prioritize all of its stormwater concerns, spending its limited resources in a manner that will derive the largest benefits. It is still unclear that water quality has indeed been degraded from stormwater discharges as referenced in our May 20, 2011 letter and the Southern California Coastal Water research Project (SCCWRP) 2010 Annual Report.

The County has continued its collaboration with its Central Coast neighbors to develop a regional monitoring program. It, along with many of its neighbors, is disappointed to learn that the verbal and written comments submitted in 2011 on the Programmatic Draft Environmental Impact Report have not been addressed or published for review prior to the close of the public comment period at noon today.

The following comments are offered on the additions and clarifications that were made to the Special Exceptions after your October 18, 2011 Board meeting.

Comments - Special Protections for ASBS, February 3, 2012 version

1. Within four years of the effective date of the Exception, the Special Protections require compliance with 85th percentile threshold of Table B constituents. Section I.A.3.e. and the Compliance Flowchart specify procedures to be followed after an exceedance of this threshold is discovered. The County is concerned that program compliance will be measured against a very small sample of reference site monitoring events. Section IV.B.2.a. and c. state that only two seasons of reference site monitoring will be required with samples from three separate storms per season. The County is concerned that six samples taken over two years is not statistically significant to use as a compliance measure for the hundreds of receiving water samples. The County desires its program to be legally and statistically defensible and questions whether the program described achieves these results.
2. No changes were made to the policy to scale the requirements based on characteristics of watersheds draining to Areas of Special Biological Significance. The policy does not scale compliance requirements based on population size, density, or land use and continues to employ a one-size-fits-all approach.
3. Section I.A.3.f. describes the procedure for requesting an extension of time for compliance based on a lack of funding, requiring a demonstration of significant hardship to discharge ratepayers. This will be impossible to prove for most municipalities who have no established stormwater utility. As you have heard repeatedly throughout the testimony on the Special Protections, municipalities without an existing stormwater utility have no viable method of creating one without going through the expensive Proposition 218 process.
4. In Section IV - Monitoring Requirements, consideration of safety may allow postponement of sampling upon receiving approval from the State and Regional Water Boards. In the California Construction General Permit (SWRCB Order No. 2010-0014-DWQ), sampling is only permitted during working hours on active construction days under safe conditions. Exceptions for unsafe conditions (such as electrical storms or flooding) are allowed explicitly without prior approval. Please clarify the conditions that would normally be considered unsafe, with special consideration of the sampling that is required in rocky intertidal locations. The Special Exceptions seem to fairly describe conditions where sampling in the "surf zone" is required, but rocky intertidal sites present additional safety concerns when collecting samples. For instance, is there a maximum wave height that the State considers safe when collecting samples during pre- and post-storm events?
5. Please provide additional clarification on the timing of pre-storm and post-storm monitoring. No guidance on the period that defines pre-or post-storm has been given. Consideration of the timing of the storm should be given, allowing sampling to occur within regular business hours, providing an increased level of safety by allowing sampling teams to be fully staffed and operating in daylight conditions. The County suggests that the pre-storm sampling event be defined as no less than 72 hours prior to a predicted storm event, allowing sampling to occur on a regular business day prior to a predicted weekend or early Monday morning storm. Similarly, the post-storm period should be defined as being no less than 72 hours after precipitation has ceased, in agreement with the definition provided in IV.A.1.

Comments - Special Protections for ASBS, February 3, 2012 version

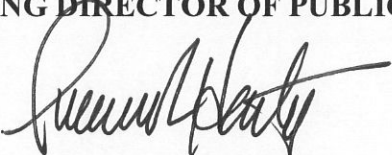
6. Section IV.A.2 remains confusing on what is being required. The wording states that flows must be measured or calculated and submitted annually to the State and Regional Boards. Because stormwater flows change instantaneously throughout the duration of every storm event, we suggest that a maximum sampling period (such as every hour) be specified to be measured for the duration the storm event. Compiling and transmitting this large volume of data will be a significant undertaking requiring capital expenditures for equipment and personnel to manage this task. The County questions whether this is the State Board's intent and the practical purpose of providing this data.
7. Section B.2.a describes that Ocean Reference Areas be located in the same region as the ASBS receiving water monitoring occurs. The County is still concerned that a suitable reference site will be able to be found that meets the criteria (i.e., less than 10% development) that is statistically similar to the Monterey and Carmel Bays that define two local ASBS.
8. Please provide a better definition of "Design Storm." The definition presented does not describe a precipitation event but instead specifies a runoff volume. Please provide a better definition of the precipitation event and a clearer connection of why this runoff volume is significant.
9. The definition of "Storm Season" does not provide dates but rather presents a definition that cannot be planned for or quantified until after the season has ended. Please consider providing dates that will allow Permittees to plan for and budget compliance-based activities. As now defined, the season will vary annually, from onset of rainfall (which can occur as early as August) until the cessation of rainfall in the spring (which can occur in June). Caltrans has defined the season from October 1 through May 1 for the North and South Coast regions, and from October 15 through April 15 for the Central Coast.

This is not an exhaustive list of the concerns that Monterey County has on this program, but these comments are offered as an attempt to clarify the intent of the State Water Board and the Special Protections. The County looks forward to working with State Water Board staff to make this an efficient and productive program. Should you have any questions regarding these comments, please contact Thomas Harty at (831) 759-6630.

Sincerely,

PAUL H. GREENWAY, P.E.
ACTING DIRECTOR OF PUBLIC WORKS

By



Thomas R. Harty, P.E.
Stormwater Program Manager

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Cc: Senator Rodwick Wright
Senator Sam Blakeslee
Assemblymember Bill Monning
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John Laird, Secretary of Natural Resources
Monterey Regional Stormwater Management Program, Heidi Niggemeyer