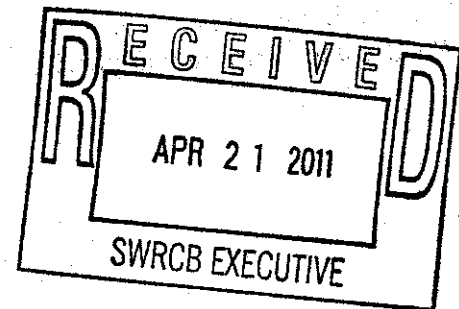


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April 20, 2011

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
PO Box 100  
Sacramento, CA 95812-0100

Dear Ms. Townsend:

**Draft PEIR for Exception to the California Ocean Plan for Areas of Special Biological Significance Waste Discharge Prohibition for Storm Water and Nonpoint Source Discharges, with Special Protections**

We appreciate the opportunity to review and provide comments on the Draft Programmatic Environmental Impact Report (PEIR) for adopting a General Exception to the California Ocean Plan for Areas of Special Biological Significance Waste Discharge Prohibition for Storm Water and Nonpoint Source Discharges with Special Protections.

Over the last decade, the California Coastal Commission has worked with the State and Regional Water Boards to implement the state's Nonpoint Source Pollution Control Program and has shown that the California Coastal Act and Water Code can be used together to protect our coastal waters. Commission staff has provided, and will continue to provide, technical assistance to local jurisdictions and state agencies. Commission staff has supported loan and grant applications to secure SWRCB project funding. Through our collaborative efforts, significant progress has been made to implement coastal water quality protection policies, plans and Best Management Practices (BMPs) in many local jurisdictions along California's coast.

The California Coastal Act provides an important framework for implementing coastal resource protection through land use planning and the regulation of development projects. The PEIR should directly discuss the relationship between the adoption of the proposed regulations and the implementation of planning and regulatory requirements of the Coastal Act. Although we support the general premise of the Exceptions and Special Protections and believe that they may help meet water quality objectives in ASBS, there are aspects of the program that need to be clarified. This could be accomplished by including in the PEIR comprehensive discussions regarding the following issues.

1. The PEIR presents a two tiered protection approach to meet water quality objectives in ASBS. The first tier uses Ocean Plan Table B criteria; however, achieving those standards may present technical difficulties that should be examined in greater detail in the PEIR. A second tier of protection will protect natural water quality in ASBS. These

standards are not set in advance of adopting the Special Protections. Instead, monitoring will be used to collect information and the standards will be set at a later time.

Without a clear understanding of what will be required, it is difficult to be able to understand the range of potential projects that will be necessary to meet the proposed Special Protection provisions, objectives and standards. Only by knowing what the full range of reasonably anticipated projects and discussing them in the PEIR would it be possible to determine whether or not these projects would be able to be implemented in a manner consistent with the Coastal Act and LCPs.

2. It is unclear how typical development scenarios, including locating and constructing BMPs, would be approached given the framework of the rule making. It is important for the PEIR to clarify whether the exceptions are to be implemented by area or by discharger (especially for non-point discharges). Do the 27 applications listed in the PEIR include all 1,658 discharges inventoried (other than those filed independently for marine research facilities)?
3. A table of typical development types, and how they would be treated under the new regulations, would be helpful to include in the PEIR. Examples that would demonstrate how the regulations would be used include:
  - If a new single family residence not within an MS4 proposes to discharge roof and driveway stormwater directly to an ASBS would it be allowed, or would a treatment control BMP be required in all cases? Why or why not? The Special Protections allow only pre-2005 nonpoint sources. We note that in recent municipal stormwater permits that a common threshold for discharge "directly to" an environmentally sensitive area is reached when the discharge is less than 200 feet from those waters. Is there a definition of "direct" in terms of runoff to an ASBS?
  - If an existing residence would add impervious surface, but is unable to infiltrate runoff would it be allowed? Why or why not? How much impervious surface or runoff would be considered as thresholds for regulation under the exceptions?
  - If a new residence were proposed in an area not included in an existing general exception application covered in the PEIR, but still would discharge to an ASBS, would this applicant need to file for a new exception? Why or why not?
  - If an existing discharge to an ASBS did not have an exception filed will it be allowed to continue? Why or why not?
  - If a new discharge that met Table B Ocean Plan requirements was proposed, and it would enter an MS4 whose discharge is not yet consistent with Table B Ocean Plan requirements, would it be allowed? Why or why not?
  - Would new or existing non-stormwater discharges currently allowed in stormwater permits (e.g., fire fighting runoff, footing and foundation drainage,

basement pumps, hillside dewatering and natural groundwater seepage) be prohibited? Can exceptions be allowed for these non-stormwater discharges if they predate the 2005 cut off? Why or why not?

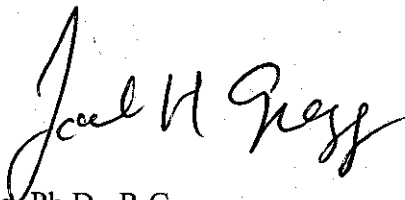
- If a highway culvert were to be relocated to a less erosive discharge location, would it require a new exception application? Why or why not?
  - How are springs and/or groundwater seepage that do not meet Table B Ocean Standards that discharge to ASBS viewed/regulated under the proposed exceptions?
  - If an applicant is unable to construct BMPs within the 4 year limit as specified, under what circumstances would these discharges be allowed to continue?
4. The types of BMPs analyzed for impact in this environmental document are education, street sweeping, and vortex separators and drain inlet protection. These BMPs, used in the PEIR to describe anticipated impacts and to propose mitigation, omit inclusion of large footprint and physically disruptive BMPs, such as infiltration trenches, vegetated infiltration areas, detention and retention basins. Where an infiltration BMP cannot be used (e.g., locations with low permeability soil or areas with steep slopes), redirection of storm water by installing collection systems, conduits and pump stations also may need to be considered. These types of BMPs appear to be 'reasonably foreseeable mitigation' and, as such, should be discussed in the PEIR. Where these BMPs would have significant impacts, alternate solutions for protecting water quality should be examined.
  5. We understand the goals of the regulations are to eliminate dry weather runoff, ensure that wet weather runoff does not alter natural water quality and that natural water quality in the ASBS is protected through monitoring. However, the PEIR should more thoroughly explain how outfall sampling will trigger BMPs to be added to a Storm Water Management Plan, Storm Water Pollution Prevention Plan or Pollution Prevention Plan, and how ocean water receiving monitoring would be used to 'indicate' that a particular source is responsible. How will these thresholds be imposed, how will decisions be made, and what criteria or thresholds will be used to determine their direction?
  6. A thorough cumulative impacts evaluation should be included in the PEIR, particularly because individual project environmental reviews projected to occur will not share the same regional perspective afforded by a programmatic evaluation. The brevity of the cumulative analysis provided makes it difficult to meaningfully evaluate coastal resource issues that may be affected by the proposed rulemaking.
  7. Coastal land use policy consistency issues may be challenging for projects proposed in built environments, which are areas targeted under the program. Often there is simply no undeveloped land area to site projects, including any required BMPs. If there is undeveloped land, it is often protected by wetland, ESHA, open space, agricultural or other special status. Cumulatively and statewide, these policy consistency issues should be investigated in the PEIR.

8. The PEIR should fully examine whether or not municipalities and related entities will be placed in a situation where they are required to meet specified water quality standards, but the projects that would be required would be inconsistent with the Coastal Act or LCPs. Where potential conflicts are identified in the PEIR, mitigation should be proposed to lessen or avoid these conflicts.
9. While it is true that some project specific impacts must be deferred to project level environmental analyses, we are concerned that adopting these regulations without a higher level of analysis could put in motion a series of events that force projects being required in the coastal zone that are not consistent with the Coastal Act and LCPs. The PEIR should evaluate the full range of expected outcomes so that adjustments can be made to the program, as necessary, to ensure its implementation in the coastal zone is both technically feasible and consistent with the Coastal Act and LCPs.
10. As local governments submit LCPs to the CCC for amendment or certification, the CCC typically recommends that they be updated to include policies protecting water quality, including those that are consistent with municipal stormwater permits. As new policies (such as improved hydromodification and Low Impact Development techniques) are incorporated into stormwater permits, they should also be reflected in the documents that guide land use, such as LCPs and General Plans. Since one of the goals of the Special Protections is to eliminate dry weather flow into ASBS, the PEIR should emphasize that such efforts will also need to be consistent with Coastal Act and LCP policies.

In conclusion, although we support the objectives of the Exceptions and Special Protections as they relate to addressing impacts from discharge into ASBS, we believe more clarity and in-depth discussion should be provided in the PEIR to answer questions about coastal zone development and coastal resource protection. We anticipate that projects contemplated by the Special Protections will sometimes require rigorous resource management decisions. Proposals implemented through land use planning or individual permits will need to be carefully evaluated for compliance with the Coastal Act and applicable LCPs; and individual projects will often require a coastal permit.

If you have any questions or would like to discuss these comments, please contact Mike Sandecki of my staff at (805) 427-4858, ([msandecki@coastal.ca.gov](mailto:msandecki@coastal.ca.gov)) or me at (415) 904-5246 ([jgregg@coastal.ca.gov](mailto:jgregg@coastal.ca.gov)).

Sincerely,



Jack H. Gregg, Ph.D., R.G.  
Water Quality Program Supervisor