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DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
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February , 2005

Ms. Celeste Cantú
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Request for Exception for Discharges into Areas of Special Biological Significance

Dear Ms. Cantú

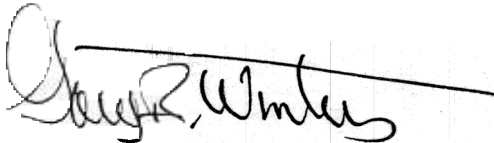
Your letter of October 18, 2004 stated that the California Department of Transportation (Department) was informed to either cease storm water discharges into Areas of Special Biological Significance (ASBS) or alternatively, apply to the State Water Resources Control Board (State Board) for an exception to the Ocean Plan. Initially, the exception option appeared infeasible because of the required demonstration of non-impact and various technical reasons (e.g., required compliance with undefined "natural" water conditions, general acceptability of an exception for the majority of discharges, the three year renewal and five year exception "sunset"). However, in our meeting with your staff on January 12, State Board representatives strongly advised that the Department apply for an exception, otherwise the Department could be considered in permit violation and subject to citizen lawsuits. Consequently, with this letter, the Department is submitting a conditional request for an exception for storm water runoff from Departmental right-of-way and facilities.

This exception request is being submitted on a conditional basis for the following reasons. First, key questions submitted as an attachment within the Department's response of December 2, 2004 have not been addressed. Second, our preliminary review indicates that in some locations the Department may be able to divert runoff, so that it discharges to land or to a non-ASBS waterway rather than directly to waters of an ASBS. Third, as noted in our December letter, the Department has been unable to identify either an environmental assessment under CEQA, or an economic assessment required by Water Code Section 13241, that evaluates the impacts of a prohibition on storm water discharges. The affected roadways and facilities were in operation at the time the ASBS designation was developed and also when the Ocean Plan was modified to prohibit storm water discharges. However, it appears the Department was never notified of the prohibition nor given the opportunity to testify concerning the impact on Department operations.

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February 1, 2005
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Enclosed please find a response to the items needed for an exception as listed in your letter of October 18, 2004. We hope to meet regularly with your staff to ensure our efforts are coordinated and that we have a common understanding of the program goals. If you have any questions, please call me or have your staff contact Michael Flake at (916) 653-4947.

Sincerely,

A handwritten signature in cursive script that reads "Gary R. Winters". The signature is written in black ink and is positioned above a horizontal line.

GARY R. WINTERS
Chief
Division of Environmental Analysis

Enclosure

c: Arthur G. Baggett Jr., Chair SWRCB
Executive Officers, Regional Water Quality Control Boards 1 - 9
Stan Martinson, Chief, Division of Water Quality, SWRCB