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April 17, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Sreet, 24th Floor
Sacramento, CA 95814



Comment Letter – Designating State Water Quality Protected Areas to Protect Marine Protected Areas and the Draft Substitute Environmental Documentation for the Proposed Amendment to the Ocean Plan

The Municipal Water District of Orange County (MWDOC) appreciates this opportunity to provide comments on the subject “Draft Staff Report and Substitute Environmental Documentation Amendment of the Water Quality Control Plan for Ocean Waters of California Addressing Implementation of State Water Board Resolutions 2010-0057 and 2011-0013 Designating State Water Quality Protection Areas to Protect State Marine Protected Areas”. This document was transmitted with the public hearing notice of February 28, 2012. This document contains an Introduction, Overview of the California Ocean Plan, Regulatory Background, Environmental Setting, CEQA Review and Analysis, Water Code Section 13241 and 13242, Proposed Amendments and References.

On March 8, 2012 a lyrics email message was received from Mr. Dominic Gregorio, Environmental Program Manager, Ocean, Wetlands and Watershed Section, Division of Water Quality indicating the intent of the email was “...to clarify that the proposed amendments would not result in the designation of new SWQPAs” and would only “...establish a framework and requirements for new SWQPAs designated in the future to protect MPAs...” and “...new SWQPAs would be considered by the Board in a completely different public planning process that would not begin until after the subject amendments are adopted and effective.”

Background

Municipal Water District of Orange County (MWDOC). MWDOC is the third largest member agency of the Metropolitan Water District of Southern California and wholesales on average nearly 200,000 acre-feet per year of imported water to 28 retail water providers in Orange County. MWDOC provides regional water supply management planning encompassing water use efficiency programs, water emergency response organization management, water supply reliability planning, and facilitates development of regional and sub-regional water supply projects.

In Orange County, water agencies have long been leaders in water use efficiency programs; groundwater protection, development and management; water reclamation/reuse research and recycling; impaired and brackish groundwater recovery; water resource management and supply reliability planning; and integrated watershed planning; return flow water quality management and treatment; and desalination research including innovative slant well intake technology development.

South Orange Coastal Ocean Desalination Project. Over the past several years, MWDOC has been managing and facilitating the South Orange Coastal Ocean Desalination (SOCOD) Project feasibility investigation and project development work together with five participating agencies – South Coast Water District, Laguna Beach County Water District, Moulton Niguel Water District, City of San Clemente and the City of San Juan Capistrano.

Since 2004, the SOCOD Project (formerly Dana Point Ocean Desalination Project) participants have been investigating the feasibility of a subsurface Test Slant Well to produce feedwater supply for the project. The first of its kind slant well was constructed out under the ocean in spring 2006. The slant well is fully buried under Doheny Beach and extends 350 feet at an angle of 23 degrees from horizontal under the ocean into a marine aquifer. It has a production rate of 3.1 mgd. An 18-month, Phase 3 Extended Pumping and Pilot Plant Test is ongoing and testing work will conclude during the first week of May, 2012. The ocean desalination feasibility investigation will be concluded this fall with submittal of draft/final reports to the grant agencies (CDWR, USEPA and USBR).

Studies were conducted to determine if a slant wellfield would cause any impingement or entrainment of marine organisms along the ocean floor. The findings from those studies showed that a slant wellfield that would draw ocean water from the marine aquifer offshore of Doheny State Beach would not cause impingement or entrainment impacts to marine organisms. The findings from those studies are contained in the attached report that was also previously submitted into the record for the Marine Life Protection Act process and was recently submitted to the State Water Board under the CEQA scoping comment process for desalination facilities and brine disposal.

For brine disposal, the SOCOD Project intends to co-dispose the concentrated ocean water brine with municipal wastewater through the San Juan Creek Ocean Outfall, a facility owned and operated by the South Orange County Wastewater Authority. This facility crosses Doheny State Beach and extends two miles offshore.

The research, demonstration and feasibility investigation into the use of subsurface slant wells for ocean desalination feedwater supply was made possible through grant funding from the California Department of Water Resources, U.S. Environmental Protection Agency and U.S. Bureau of Reclamation as well as local funding from the five aforementioned project participating agencies and MWDOC. This is one type of an environmentally protective technology that can be applied to areas where site conditions can support this approach.

However, the capacity of this type of feedwater system is constrained to the productive capacity of the coastal offshore hydrogeology.

This work has been supported and authorized through regulatory approvals from the California Department of Parks and Recreation, California State Lands Commission, California Coastal Commission, California Department of Fish and Game, California Regional Water Quality Control Board (San Diego Region) and U.S. Army Corps of Engineers. These agencies have continued to support our work in developing this cost-effective and environmentally protective technology for ocean water intakes. Moreover, this project continues to receive widespread environmental and public support because of its environmental protective features, its cost-effective approach, and because of the recognized reliability benefit that can be provided to the South Orange Coastal area of Orange County, an area heavily dependent on imported water.

Comments

The subject Draft Staff Report and SED notes near the top of page 35 that State Water Board Resolution No. 2010-0057 serves as the basis for the proposed amendments described in Section 5.4 (Note: Section 5.4 is Lead Agency; we assume the correct reference is to Section 7 Proposed Amendments). The Draft Staff Report, SED and Proposed Amendments are consistent with this resolution and should be revised accordingly to achieve consistency. We point out a couple of areas that stand out and require clarification.

Clarify Definition in Appendix I for SWQPA–GP for Consistency with MMAIA. The definition under Appendix I for a SWQPA uses the phrase “...*to maintain natural water quality...*”. The definition for SWQPA in the Marine Managed Areas Improvement Act (MMAIA) PRC Section 36700 (f) defines the intent to be protection from “...*an undesirable alteration in natural water quality...*”. Accordingly, the definition should be changed to read as follows:

State Water Quality Protection Areas – General Protection (SWQPA-GP) designated by the State Water Board to protect marine species or biological communities from an undesirable alteration in natural water quality within State Marine Parks and State Marine Conservation Areas.

Revise Proposed Amendment E.1 (a) (2) Description of SWQPA-GP to be Consistent with the SWRCB Resolution No. 2010-0057 and Staff’s Intent that this Proposed Amendment is to Protect MPAs. The description includes the expansion of the intent beyond MPAs by inclusion of the phrase “... *other unique and sensitive areas...*”. This is overly broad, expansive and far-reaching language that goes well beyond the intent of the aforementioned definition of SWQPA, the SWRCB Resolution No. 2010-0057, staff’s email clarifying message of March 8, 2012 (D. Gregorio via lyris distribution) and the MMAIA. It needs to be deleted to assure conformity.

Process for Future SWQPA – GP Designations. In SWRCB Resolution 2010-0057, the State Water Board directed staff to work with the Regional Boards to develop recommendations for

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new SWQPAs to protect water quality in the MPAs that are being developed through the MLPA process. The document should note that the MPAs designations have previously been completed for the southern California region and became effective on January 1, 2012.

The authorizing language in the Marine Managed Areas Improvement Act (MMAIA) defines a Marine Protected Area (MPA) to be consistent with the MLPA process for the following classifications: (1) state marine reserve, (2) state marine park, and (3) state marine conservation area. The MMAIA also clarifies that the State Water Board may designate, delete or modify state water quality protection areas and with the regional boards may take appropriate actions to protect state water quality protection areas. Section 36900 provides general requirements for the designation process. The March 8, 2012 message from the Board indicated that any new SWQPAs would be considered by the Board in a “completely different public planning process” that would not begin until after the subject Ocean Plan amendments are adopted for the SWQPAs and when they become effective.

The proposed procedures for designating SWQPA-GPs are contained and described under “APPENDIX IV PROCEDURES FOR THE NOMINATION AND DESIGNATION OF AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS)”. For conformity of intent, this heading should be changed to “...***DESIGNATION OF STATE WATER QUALITY PROTECTION AREAS***”.

These procedures should be made consistent with the intent of designation process for MPAs per our above comments. The designation for SWQPA-GP should clarify that their extent would be limited to no greater of an area than to be overlying and coterminous with the boundaries of established MPAs when proposed.

The approach for designation of new SWQPAs should be consistent with the State Water Board Resolution of 2010-0057 and the MMAIA.

Revise the Proposed Amendment to Allow Subsurface Intakes in SWQPAs (Clarify Proposed Prohibition on Seawater Intakes in SWQPAs). The proposed amendment should provide clarification language to the proposed prohibition of seawater intakes found at page 43 (d) (2) to clarify that it does not apply to the use of subsurface intakes, such as slant wells. As written, the prohibition may be construed to apply to all types of seawater intakes. It would be appropriate and protective to the ocean to allow the use of subsurface intakes such as slant beach intake wells or other environmentally protective subsurface or screened intakes in SWQPA – GP areas. We understand that the intent is to prohibit seawater intakes that sit above the seafloor and draw water directly from the ocean (personal communication with D. Gregorio).

We request that Implementation Provisions E. 5 (d) (2) be modified as follows:

Seawater Intakes –No new seawater intakes shall be established within SWQPA-GP, with the exception that subsurface slant/horizontal well intakes or other environmentally protective intake technology are allowed.

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Revise the Proposed Amendment to Allow Changes in the Composition of Existing Ocean Discharges. The proposed amendment should provide clarity and flexibility that changes in the composition of discharges from existing outfalls may change over time – e.g., in response to enhanced water conservation measures, or in response to the co-disposal of brines from desalination operations along with treated effluent from POTWs.

Summary

We respectfully request that the State Water Board include the provided information into the record and make the clarifications and conformity changes as noted above in finalizing the Proposed Amendments to the COP for SWQPAs.

Thank you for the opportunity to provide comments. I would be pleased to provide further clarification, provide additional information, or answer any questions. I may be contacted at (714) 593-5003 or by email at rbell@mwdoc.com.

Sincerely,

A handwritten signature in black ink that reads "Richard B. Bell". The signature is written in a cursive style with a large, sweeping "R" and "B".

Richard B. Bell, PE
Principal Engineer/Project Manager

cc: B. Flahive, SOCWA
B. Burnett, SCWD
R. Davis, CalDesal