



October 21, 2005



CALIFORNIA
CHAMBER of
COMMERCE

Tam Doduc
Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: Areas of Special Biological Significance–October 24, 2005 State Board Workshop

Dear Chairwoman Doduc:



We are writing with respect to the State's regulation of Areas of Special Biological Significance (ASBS), as current trends in ASBS governance raise serious concerns, with potentially far-reaching and unintended consequences. We the undersigned represent a diverse group of small and large cities, small and large counties, business organizations, industry, school districts, farmers and other entities throughout the State. We are active participants in efforts to keep our State's waters clean and healthy, and recognize and appreciate the value to California in maintaining water quality. We have united as a broad-based coalition working to protect our coast and communities.



We appreciate the State Water Board's recognition, at the August 31 ASBS Workshop, of the practical realities in eliminating all pollutants from storm water, intercepting and pumping storm water out of ASBS watersheds, or directing it to Publicly Owned Treatment Works, which do not have the capacity to handle such flows. However, we remain greatly concerned that the State Water Board is unnecessarily complicating the path to a pragmatic ASBS program by continuing to assert that the underlying Ocean Plan prohibition allows only pristine storm water to enter ASBSs. Since no storm water contains zero pollutants, this extreme interpretation preordains a program based on exceptions to the prohibition – raising a host of concerns, starting with the presumption that runoff to ASBSs is *per se* illegal, irrespective of whether that runoff is affecting water quality or the ecosystem.



Under the zero allocation theory, the Central Coast Regional Board earlier this year issued Cease and Desist Orders proscribing runoff to ASBSs from golf courses and small towns that has been occurring for decades, without any apparent harm to the ASBSs. In La Jolla, the Scripps Institution of Oceanography recently began operating under an exception process premised on zero allocation that will cost millions of dollars over 5 years – and that is just the beginning.



Other regulators have suggested that Table B of the Ocean Plan sets the standards that must be met before storm water can enter an ASBS. The Table B standards were developed for application in the Ocean, not in the discharge. Many of the Table B standards are more stringent than the State's drinking water standards, which are well known to require very costly treatment works. Clearly, the Table B standards do not present a reasonable or practicable approach.

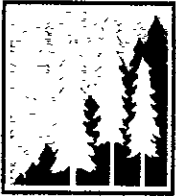


In fact, these zero-tolerance regulatory approaches cannot be squared with any apparent threat to the State's ASBSs from storm water runoff. For example, based upon decades of observations, which include detailed surveys of inter tidal and sub tidal communities, experts at the Hopkins Marine Station have been unable to identify any negative effects of storm water discharge into the Hopkins Marine Life Refuge (established in 1931). Therefore, in the absence of any data indicating negative effects of storm water discharge on coastal marine ecosystems, the expenditure of resources to eliminate storm water discharge into this ASBS is not warranted. We believe a similar conclusion would be reached for other ASBSs, as only the most pristine areas were subject to original designation.





If applied state-wide to the 34 ASBSs that cover roughly one-third of coastal California, the above approaches would present a choice between an impossible-to-achieve perfect standard for storm water and other ASBS discharges, or an impossibly expensive attempt at a solution that could require water treatment plants, and other economically and technically infeasible measures, affecting literally hundreds of coastal cities, counties, school districts, and hospitals, and thousands of businesses and farmers.



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Further, these approaches to ASBS regulation represent a slippery slope that could have severe consequences for dischargers well beyond the immediate vicinity of the 34 ASBSs. Surely, it will be argued by some that the zero-tolerance interpretation of the ASBS prohibition should be extended to existing waste discharge prohibitions in Basin Plans, which apply generally to inland surface waters. Because of these preexisting Basin Plan prohibitions, it would be imprudent for the State Board to assume its decision regarding ASBSs will not have widespread ramifications beyond the 34 ASBS watersheds.

Instead of enforcement or exceptions, a workable and effective strategy would focus on the health of the ASBS, and whether discharges threaten to adversely affect natural water quality, under the following cooperative framework:



- Identify Best Management Practices for ASBS runoff;
- Establish local stakeholder groups to facilitate the management of ASBS;
- Working with regional water boards, develop and implement ASBS assessment plans;
- Remedy any undesirable alteration of natural water quality;
- Allow discharges that do not cause an undesirable alteration of natural water quality;
- Compliance with these provisions would constitute "special conditions," which would obviate the need for exceptions or enforcement; and
- Provide state funding to facilitate local protection of these areas of statewide significance.



Water quality along California's shore including ASBS has improved greatly over the last two decades, largely because taxpayers have dug into their pockets to finance sewage treatment and other improvements to clean up our coast. We share the goal of protecting the sensitive and important marine life that an ASBS designation represents. We would greatly appreciate the State Water Board's serious consideration at the October 24 Workshop of a more reasonable stakeholder-driven approach to ASBS governance, as described above. We are ready to work with the regional and state boards during these ongoing governance proceedings to find a protective, workable solution for the ASBS.



Sincerely,

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