



RESOURCE MANAGEMENT SERVICES

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Jeanine Townsend

VIA Email: commentletters@waterboards.ca.gov

Subject: Comment Letter – California Ocean Plan Amendments



Dear Member of the State Water Resources Control Board:

I am writing to express concern about the regulatory approach being taken by the State Water Resources Control Board (SWRCB) and specifically with respect to the proposed amendment to the Ocean Plan as it relates to Model Monitoring.

As written, this plan places undue responsibility on direct Ocean dischargers with little consideration for inland discharges, creating an issue of equity. Coastal communities and other non-MS4 dischargers make up a small minority of the land area that drains into the Pacific Ocean. Yet these proposed new requirements burden just the coastal communities with the responsibility and the cost of potential water quality issues. It is understandable that to some extent, MS4s as well as non-MS4s should monitor their discharge water characteristics. However, it is neither reasonable nor equitable to burden just the coastal dischargers with the responsibility of monitoring the condition of the receiving waters when the entire United States west of the continental divide drains to the Pacific Ocean. If the goal is to learn about the baseline environmental conditions of the ocean, which appears to be the case, then it would be more equitable to spread the cost of this research upon all of the state. This would also provide the state with a mechanism to fund a comprehensive and well coordinated approach. Pursuant to the Water Code, however, the burden of monitoring must bear a reasonable relationship to the need for and the benefits of monitoring. §§ 13267(b), 13225(c); *City of Burbank v. SWRCB* (2005) 35 Cal.App.4th 613. To date, the SWRCB has not presented evidence indicating the need for or the benefits of the proposed monitoring in comparison to the cost imposed on public agencies and private entities in the midst of a recession. Per the Water Code Sections 13241, the State has not provided information regarding the water quality conditions that could reasonably be achieved through the new proposed monitoring. As currently written, public agencies and private entities will be required to spend hundreds of thousands on monitoring that has no proven environmental benefit.

The next concern is the cost to carry out the monitoring required in the proposed amendment and the fact that the amendment is an unfunded State mandate. From the report provided by state staff, the City of Monterey, for example, can expect to spend at least an additional \$19,000 per year. This figure doesn't include the costs associated with getting a monitoring plan approved or the time and money taken to carry out the plan. Actual costs are expected to exceed \$40,000 per year, not including costs for "Special Studies" or for other analysis such as the TRE. The City of Seaside simply does not have funds for the increased costly monitoring as proposed in the amendment. There are too many scientific unknowns to propose these stringent monitoring

requirements for receiving water, sediments, benthic intertidal marine life, and bioaccumulation, unknowns associated with background pollutant levels, natural flux, ocean conditions, currents, and variation due to habitat differences.

The proposed monitoring requirements constitute an unfunded mandate and the costs to perform the monitoring should either be reimbursed by the State or the State should conduct the monitoring. The SWRCB should conduct a thorough unfunded mandates review of all amendments proposed to the Ocean Plan during its triennial review and then publish the findings and conclusions of that analysis for public review and comment as opposed to taking action on these amendments. Again, it is the State's responsibility to determine where problem areas exist such that public agencies and private entities can then utilize their limited resources to address specific issues instead of simply paying for ocean research.

The City of Seaside supports the comments submitted by the Monterey Regional Storm Water Management Group in their entirety. I urge the SWRCB to look at the current economic conditions and state of our local governments while weighing the unlikely improvement in water quality which will be the result of the proposed monitoring in the new plan before moving forward.

Please do not hesitate to contact Tim O'Halloran, PE, City Engineer/Public Works Services Manager at (831) 899-6839 or TO'Halloran@ci.seaside.ca.us regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Moe', with a stylized flourish at the end.

Sydney A. Moe, PE
Junior Engineer